

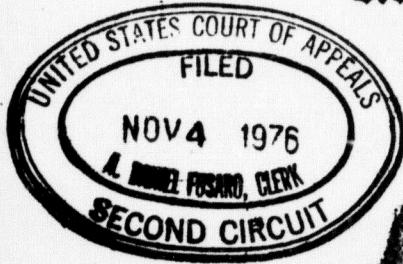
*United States Court of Appeals
for the Second Circuit*



**APPELLEE'S
APPENDIX**

Original with affidavits
of mailing

76-6102



United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6102

ARNOLD HAJE, THOMAS BEVILACQUE, LOUIS C.
RESLER, JOHN J. SHANNON and WARREN
C. McDOWELL,

Plaintiffs-Appellants,

—against—

ROBERT E. HAMPTON, Chairman, JAYNE B. SPAIN
and L. J. ANDOLSEK, Commissioners, constituting the
UNITED STATES CIVIL SERVICE COMMISSION,
BILLIE H. VINCENT, Facility Chief, New York Center,
GERALD SHIPMAN, Personnel Officer, New York Center,
LOUIS C. POL (Acting) Facility Chief, FAA,
New York Center, DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION,
Eastern Region, Federal Building, Jamaica, New York,
and the UNITED STATES OF AMERICA,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLEES' APPENDIX

DAVID G. TRAGER
*United States Attorney,
Eastern District of New York.*

PAGINATION AS IN ORIGINAL COPY

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1 Mr. Haje, I want you to look at what appears to be a
2 telegram in your record and I ask you is that the
3 telegram asking you to report for duty?

4 A It appears to be the one yes, but this
5 as far as I could understand from this was the...
6 particularly where they mentioned, "investigations reveal
7 that most failures occurred because of inadequate study
8 during the first weeks and inability to catch up later."
9 This was particularly involved in my orientation and
10 basic certification courses which Mr. De Luca was one of
11 my instructors.

12 Q Are you answering my question that this
13 is to the best of your knowledge the telegram?

14 A It appears...

15 MR. RESNICOFF: The answer is yes it appears
16 to be.

17 Q You've read that telegram Mr. Haje, I
18 want to quote a set of words from it. "Your career
19 conditional appointment as an Air Traffic Control Specialist
20 GS 7, \$8098.00 dollars per annum is approved..." and I
21 emphasize where it says, "...subject to satisfactory
22 completion of Air Route Traffic Control Specialist Course
23 administered at the New York Air Route Traffic Control
24 Center in June." Now, did that not convey to you the
25 conclusion that you had to successfully pass your Traffic

202

:SYB027 SSH887

SY JAB455 (LFZ) GOVT NL PDB 4 EXTRA=JAMAICA NY 50=

THOMAS BEVILACQUE=

6 LEWIS ST BAYVILLE NY 11709

YOUR CAREER CONDITIONAL APPT AS AN AIR TRAFFIC CONTROL SPECIALIST GS-7 \$8098 PER ANNUM IS APPROVED SUBJECT TO SATISFACTORY COMPLETION OF AIR TRAFFIC CONTROL SPECIALIST COURSE ADMINISTERED BY THE NY AIR ROUTED TRAFFIC CONTROL CENTER AND ONE YEAR PROBATIONARY PERIOD AND SATISFACTORY RESULTS OF CHARACTER AND SUITABILITY INVESTIGATION. REPORT FOR DUTY AT 830AM ON MONDAY 20 JULY 1970 TO MR DOYLE CHIEF NY AIR ROUTE TRAFFIC CONTROL

WU 1201 (R 5-69)

Hearing Exhibit #4

CENTER MACARTHUR AIRPORT RONKONKOMA NY. PRIOR EXPERIENCE IN AIR TRAFFIC CONTROL DOES NOT ASSURE SUCCESSFUL COMPLETION OF TRAINING COURSE. COURSE DEMANDS HARD WORK HOME STUDY AND STRICT ATTENTION TO TRAINING. INVESTIGATION REVEALS THAT MOST FAILURES OCCUR BECAUSE OF INADEQUATE STUDY DURING FIRST WEEKS AND INABILITY TO CATCH UP LATER. FAILURE WILL RESULT IN TERMINATION OF YOUR APPT. PLEASE NOTIFY MISS MASTRANDREA OF THIS OFFICE WHETHER YOU ARE ACCEPTING THIS OFFER. TEL 212-995-8540/8541.

R L FERRARO FEDERAL AVIATION ADMIN
FED BLDG KENNEDY ARPT==

68-1543
1040A EDT LS
BY



Telegram

647A EDT JUN 10 70 SYA076
 SSG094 SY JAA067 NL PDB WUX JAMAICA NY 1149

JOHN SHANNON

206 PLITT AVE SOUTH FARMINGDALE NY

YOUR CAREER CONDITIONAL APPT AS AN AIR TRAFFIC CONTROL SPECIALIST GS-7, \$8098. PER ANNUM, IS APPROVED SUBJECT TO SATISFACTORY COMPLETION OF AIR TRAFFIC CONTROL SPECIALIST COURSE ADMINISTERED AT THE N Y AIR ROUTE TRAFFIC CONTROL CENTER COMMENCING 29 JUNE 1970 AND ONE YEAR PROBATIONARY PERIOD AND SATISFACTORY RESULTS OF CHARACTER AND SUITABILITY INVESTIGATION. REPORT FOR DUTY AT 8:30 A. M. ON MONDAY 29 JUNE 1970 TO MR BOYLE, CHIEF, N Y AIR ROUTE TRAFFIC CONTROL CENTER, MC ARTHUR AIRPORT, RONKONKOMA, N. Y. PRIOR EXPERIENCE IN AIR TRAFFIC CONTROL DOES NOT ASSURE SUCCESSFUL COMPLETION OF TRAINING COURSE. COURSE DEMANDS HARD WORK, HOME STUDY AND STRICT ATTENTION TO TRAINING. INVESTIGATION REVEALS THAT MOST FAILURES OCCUR BECAUSE OF INADEQUATE STUDY

8F-1201 (R5-59)

Hy
END

58

WESTERN UNION
TELEGRAM

WESTERN UNION
TELEGRAM

WU 26 DL PD

FAX JAMAICA NY OCT 11 425P EDT

WARREN C MCDOWELL

2806 KANE AVE MEDFORD NY

YOU HAVE BEEN SELECTED FOR CAREER CONDITIONAL APPOINTMENT SUBJECT TO ONE YEAR PROBATION AS AIR TRAFFIC CONTROL SPECIALIST GS PAY \$625.75 PER ANNUM. REPORT FOR DUTY ON MONDAY 10/28/68 AT 830AM TO CHIEF NEW YORK AIR ROUTE TRAFFIC CONTROL CENTER MAC ARTHUR AIRPORT RONKONKOMA NY. SHORTLY AFTER REPORTING FOR DUTY YOU WILL BE REQUIRED TO ATTEND A 6-WEEK TRAINING COURSE TO BE CONDUCTED AT THE FAA ACADEMY AT OKLAHOMA CITY OKLAHOMA PLEASE ADVISE THIS OFFICE TEL NO 212 595-8651 NO LATER THAN 10/18/68 WHETHER OR NOT YOU ARE ACCEPTING THE APPOINTMENT AND ABLE TO REPORT FOR DUTY AS REQUESTED

P L FERRARO FEDERAL AVIATION ADMIN FED BLDG
KENNEDY APT

A-4

H3

(FOR AGENCY USE)

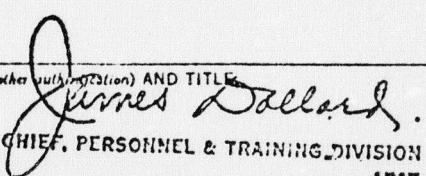
128

Applicant's 2
A 5

1. NAME (CAPS) LAST—FIRST—MIDDLE RESLER, LOUIS C.		MR.—MISS—M'S	2. (FOR AGENCY USE)	3. BIRTH DATE (Mo., Day, Year) 01-15-28	4. SOCIAL SECURITY NO. 462-58-8526
5. VETERAN PREFERENCE 2 1—NO 2—5 PT. 3—10 PT. DISAB. 4—10 PT. COMP.		6. TENURE GROUP 2	7. SERVICE COMP. DATE 01-01-64	8. (FOR CSC USE) 	
9. FEGLI 4 1—COVERED (Regular only—declined Option) 2—INELIGIBLE 3—WAIVED 4—COVERED (Reg & Opt)		10. RETIREMENT 1 1—CS 2—FICA	11. (FOR CSC USE) 3—FS 4—NONE 5—OTHER		
12. CODE NATURE OF ACTION 101 Career Conditional Appt. RETM		13. EFFECTIVE DATE (Mo., Day, Year) 12-29-69	14. CIVIL SERVICE OR OTHER LEGAL AUTHORITY CS Register		
15. FROM: POSITION TITLE AND NUMBER		16. PAY PLAN AND OCCUPATION CODE GS-2152	17. (a) GRADE OR LEVEL 07	(b) STEP OR RATE 01	18. SALARY pa 87639.
19. NAME AND LOCATION OF EMPLOYING OFFICE					
20. TO: POSITION TITLE AND NUMBER Air Traffic Control Specialist (Center) EA-8378 (Flight Data Developmental)		21. PAY PLAN AND OCCUPATION CODE GS-2152	22. (a) GRADE OR LEVEL 07	(b) STEP OR RATE 01	23. SALARY pa 87639.
24. NAME AND LOCATION OF EMPLOYING OFFICE FEDERAL AVIATION ADMINISTRATION, EASTERN REGION FEDERAL BLDG., JOHN F. KENNEDY INT'L. AIRPORT JAMAICA, NEW YORK 11430		Air Traffic Division Operations Branch Center			
25. DUTY STATION (City—county—State) Islip, N.Y.		26. LOCATION CODE 31-2920-103			
27. APPROPRIATION 001		28. POSITION OCCUPIED 1—COMPETITIVE SERVICE 2—EXCEPTED SERVICE	29. APPORTIONED POSITION FROM: 1—PROVED-1 TO: 2—WAIVED-2 STATE		
30. REMARKS <input checked="" type="checkbox"/> A. SUBJECT TO COMPLETION OF 1 <input checked="" type="checkbox"/> B. SERVICE COUNTING TOWARD CAREER (OR PERMANENT) TENURE FROM		YEAR PROBATIONARY (OR TRIAL) PERIOD COMMENCING 12-29-69			
31. SEPARATIONS SHOW REASONS BELOW, AS REQUIRED CHECK IF APPLICABLE: C. DURING PROBATION					

RETM/AF/07-31-69/12257646/E-6/reg/20/noncmbt

Your veterans preference is not applicable for reduction in force purposes.

31. DATE OF APPOINTMENT AFFIDAVIT (Accessions only)		34. SIGNATURE (Or other authentication) AND TITLE  James Dallard CHIEF, PERSONNEL & TRAINING DIVISION 47 1217	
32. OFFICE MAINTAINING PERSONNEL FOLDER (If different from employing office) PERSONNEL AND TRAINING DIVISION		35. DATE 12-29-69	
33. CODE TD 03	EMPLOYING DEPARTMENT OF AGENCY DEPARTMENT OF TRANSPORTATION	1. EMPLOYEE COPY	

POSITION SUMMARY

POSITION SUMMARY

Performs a variety of assignments of a developmental level at a Level II Center where the work situation is characterized by sustained periods of extremely heavy volumes of traffic. These sustained periods of extremely heavy congestion substantially increase the difficulty of working with combinations of such elements as: mixtures of arriving, departing and enroute traffic; mixtures of fast and slow aircraft; unfavorable terrain features; numerous airports and airways in the control area; and the regular occurrence of special civil and military missions. This work situation is normally found at a center facility where the annual volume of activity exceeds 1 million aircraft handled.

II. Principal Duties and Responsibilities

1. Receiving flight plans from stations, terminal facilities, military bases, and airlines. Receiving flight plans with estimates from adjacent centers. Loads flight strips into strip holders and distributes strips to the appropriate controller strip bay.
2. Using flight calculator and/or manually calculates estimated ground speed of aircraft quickly and accurately, taking into consideration the effects of meteorological conditions on aircraft speed.
3. Recognizing errors in content, terminology, and format of flight plans.
4. Preparing estimates of aircraft arrival time over various points along the route of flight. Plot and prepare flight progress strips for military missions, which often utilize other than normal reporting or fix points in their routes.
5. Posting calculated estimates with other significant data concerning each flight on progress strips and assuring delivery of these strips to the proper sector or sectors.
6. Operating synchro-input typewriter to enter flight plans into the computer.
7. Transmitting traffic clearances and control instructions to stations or towers for relay to aircraft, when specifically authorized.

III. Supervision Received

Works under immediate supervision at the outset of each assignment to a new kind of work; but when checked out for particular position(s) of operation, the controller independently performs the described duties under general supervision.

IV. Other Factors

This is a developmental position designed primarily to prepare Air Traffic Control Specialists for independent performance of work at the full performance level. Accordingly, the incumbent of this position receives training and acquires competence in the performance of duties at the next higher grade level at this facility which are described in Position Description EA-8311. Additionally, position may be required to rotate through lower graded duty assignments which are described in Position Description EA-8311.

Incumbents of this position who fail to meet the requirements for or to accept promotion to the next higher nonsupervisory grade level may be retrained, demoted or separated from employment.

THE BOARD OF U.S. CIVIL SERVICE EXAMINERS
John F. Kennedy International Airport

Announces an examination for

Air Traffic Control Specialist

Grade GS-6 \$5235 per annum

for

CENTER TOWER STATION GENERAL

FOR DUTY IN THE
FEDERAL AVIATION AGENCY

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SPECIAL CONDITIONS OF EMPLOYMENT:

- A. Persons appointed to any of the positions covered by this standard, in addition to performing the duties of the position to which assigned, constitute a reservoir from which promotions will be made to higher grades. The Federal Aviation Agency conducts up-grade training programs for Air Traffic Control Specialist personnel. Failure of personnel to pass training requirements for, or to accept promotion to, higher grade Air Traffic Control Specialist positions may constitute grounds for reassignment, demotion, or separation from employment.
- B. Persons appointed to any of the positions covered by this standard are subject to geographical relocation, as may be required for the convenience of the agency, to provide for the maximum utilization of trained and qualified personnel to meet personnel staffing requirements.

EXPERIENCE, TRAINING AND RELATED REQUIREMENTS:

AIR TRAFFIC CONTROL SPECIALIST (STATION)
AIR TRAFFIC CONTROL SPECIALIST (CENTER)

AIR TRAFFIC CONTROL SPECIALIST (TOWER)
AIR TRAFFIC CONTROL SPECIALIST (GENERAL)

All candidates for any option must pass a written test designed to measure their ability to learn and perform the duties of the position and meet the following experience, training and related requirements:

- (a) have completed a four-year college course leading to a bachelor's degree; or
- (b) have three years of progressively responsible experience in administrative, professional, investigative, technical, or other work which would prepare an individual to enter into a position of responsibility; or
- (c) have any equivalent combination of the above education and experience. In combining education and experience, an academic year of study will be considered equivalent to nine months of experience.
- (d) hold or have held an appropriate facility rating and actively controlled aircraft in a tower, center, GCA, RAPCON/RATCC, or any combination of these facilities; or
- (e) hold or have held an FAA certificate as a dispatcher for a scheduled or irregular air carrier; or
- (f) hold or have held an instrument flight rating; or
- (g) hold or have held an FAA certificate as a navigator or have been fully qualified as a Navigator/Bombardier in the Armed Forces.

For the Station option only, applicants who pass the written test may qualify on the basis of the following experience:

- (a) Two and one-half years of progressively responsible experience in the field of aeronautical air/ground communications or flight operations which demonstrates knowledge of weather observations, rules and procedures of air traffic control use of radio aids, and communications rules and procedure, (at least 6 months of this experience must have been at a level of difficulty and responsibility comparable to GS-5 in the Federal service; or
- (b) have 350 hours of flight time as co-pilot or higher and hold or have held a private certificate or higher. Where pilot experience was obtained on active duty with the U. S. Armed Forces, the certificate requirements will be waived, but evidence of rating in the Armed Forces must be presented.

Sign
Copy

9 MAR 1972

Personnel

Notice of Proposed Removal

ATC: Arnold Haja, 23
 TPSU: S-ATC U. Cadet, Asst. Chief

This is notice that I propose to remove you from your position as Air Traffic Control Specialist (Center) GS-2112-3, at the New York ATC Center, Rutherford, New York; not earlier than thirty (30) days from the date you receive this notice. The reason for this proposed action is as follows:

REASON: Failure to satisfactorily complete upgrade training requirements for the position of Manual/Interphone Controller.

ASSIGNMENT 1: You are assigned to position No. EA-8077. This is a developmental position which provides that you receive training and acquire competence in the performance of duties at the next higher grade level at this facility. It additionally provides that failure to meet the requirements for the next higher grade level may be grounds for reassignment, demotion or separation.

You attended Manual/Interphone training class M12 at this facility from 23 August 1971 to 27 August 1971. You then attended Oklahoma City upgrade training from 31 August 1971 to 29 October 1971. Upon completion of training at Oklahoma City, you returned to the New York Center and were provided with laboratory training from 1 November 1971 to 3 December 1971, during which time you were administered simulated control problems of the type specified in the National Enroute Training Program, Phase 71 (Change Order 3120.9), and New York Center Order 3120.10, dated 7 December 1970. In accordance with the National Enroute Training Program and Facility Order 3120.10, successful completion of a problem of 110 point complexity is required in order to pass this phase of the training program. At the end of your period of laboratory training on 3 December 1971, you had failed to meet this requirement. Examples of your unsatisfactory performance are as follows:

(1) 18 November 1971 - 110 points: You climbed November 5730U en Ocean City departure through the altitude of November 1330J enroute northeast bound on Victor 139. No separation existed or was applied. You cleared National 411 to climb to 16,000 feet at the Hillville VOR. Navy 36212 was enroute over Hillville at an assigned altitude of 10,000 feet. No separation of any type was applied and none existed. You also had twelve (12) control procedural errors on this criterion test #25.

BEST COPY AVAILABLE

Page 2.

18 November 1971 - 110 points: In another criterion test problem, Overseas National 24 was northbound on Victor 1 maintaining 15,000 feet. November 54121 was eastbound on Victor 200 maintaining 15,000 feet and converging with Overseas National 203. No standard separation existed or was applied between these aircraft. Riddle 739, a Riddle departure was cleared by you to climb to flight level 300. Allegheny 895 was cleared by you to climb to 13,000 feet. Both aircraft were converging with each other and no type of separation existed or was applied. You had a total of four (4) traffic conflicts on this #23 criterion test.

19 November 1971 - 110 points: You climbed Eastern 871 to flight level 240 at the Sea Isle VOR. At the same time you cleared Pan American 63 to descend from 16,000 feet to 14,000 feet at the same location. Pan American 63 was converging on the Eastern aircraft. No type of separation existed or was applied between these aircraft. Mason Airways 4 over Salisbury VOR holding was cleared to descend to 3,000 feet. Mason Airways 19 departed Ocean City airport via Salisbury climbing to 2,500 feet. No standard separation existed between these aircraft and none was applied. You had a total of five (5) traffic conflicts on this #23 criterion test.

22 November 1971 - 110 points: You cleared Eastern 963 to climb to 17,000 feet at the Sea Isle VOR. Pan American 61 was maintaining 16,000 feet on a converging course. No type of standard separation existed or was applied to these two aircraft. On the same date you cleared Eastern 103 to 17,000 feet through Navy 52724 who was converging on him and maintaining 16,000 feet at Sea Isle VOR. No type of separation was applied or existed between these aircraft. On the same date, you climbed Allegheny 805 to 16,000 feet at Sea Isle while November 54117 was approaching Sea Isle maintaining 14,000 feet. No type of separation existed between these aircraft. On this date you had a total of six (6) traffic conflicts during your training.

24 November 1971 - 110 points: You descended Pan American 215 from 11,000 feet to 8,000 feet. You then climbed National 411 from 9,000 feet to 12,000 feet on a converging course. At no time did you provide standard minimum separation between these two aircraft. On the same date you descended November 17460 from 8,000 feet to 4,000 feet at Sea Isle VOR. You then descended November 1645X from 9,000 to 4,000 feet at Sea Isle. No standard separation existed between these aircraft.

24 November 1971 - 110 points: You climbed Pan American 213 from 10,000 feet to flight level 130 at Sea Isle VOR. Navy 915 ALFA was converging on Sea Isle VOR maintaining 16,000 feet. No standard separation was applied between these two aircraft. Pan American 214 was cleared by you to descend from 17,000 feet to 14,000 feet at Sea Isle VOR. Navy 915 ALFA was converging on the Sea Isle VOR maintaining 16,000 feet. No standard separation existed between these aircraft.

On the same date you descended NLC 70008 from 15,000 feet to 11,000 feet. Pan American 214 was maintaining 14,000 feet on a converging course. No standard separation was applied or existed.

Page 3.

23 January 1972 - 110 points: You climbed Allegheny 720 to 17,000 feet at the Millville VOR. National 615 was maintaining 17,000 feet on a converging course. No type of standard separation was provided or existed between these aircraft. On the same date, you descended Pan American 63 holding at Leesburg intersection to 14,000 feet. You then cleared National 411 a departure from Philadelphia airport crossing Leesburg to climb to 14,000 feet. No standard separation existed between these aircraft. On the same date, you descended November 17440 was enroute at 9,000 feet and converging over Sea Isle VOR. No standard separation existed between these aircraft when altitude change was effected. On the same date, you cleared November 17440 for an approach to the Salisbury Maryland Airport. At the same time you cleared November 29048 to depart the Ocean City airport to climb to 5,000 feet. No standard type of separation existed between these aircraft.

You may reply to this letter personally, in writing, or both, to me. You may also submit affidavits in support of your answer. You will be allowed fifteen (15) calendar days from the date you receive this letter to submit your reply.

Consideration will be given to extending this period if you submit a request stating your reasons for desiring more time. Full consideration will be given to any reply you submit. If you do not understand the reasons why your removal is proposed, contact Mr. C. Shipman, Personnel Officer, Room 112, extension 206 or 207, for further information.

You have the right to review any of the material relied upon to support the reasons for your proposed removal. You may be granted up to 16 hours of official time to review this material, to secure any affidavits you may wish to present and to prepare a written reply. If you wish to review the material or to obtain official time for the purpose stated above contact Mr. C. Shipman, Personnel Officer, Room 112, extension 206 or 207.

As soon as possible after your reply is received or after expiration of the fifteen (15) day limit, if you do not reply, a written decision will be issued to you. You will remain in an active duty status at your present grade and salary during the advance notice period.

LOUIS C. POE
(Acting) Facility Chief
New York Center

PLEASE SIGN AND RETURN TO CMEF, NY ANTOC IMMEDIATELY.
SIGNATURE: John D. Shipman DATE 1/12/15 1972

Shipman/EG/2/17/72
cc:
EA-15
EA-540
Trng.
A/C
Pers.
Sign.Copy

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TRENDON

Notice of Proposed Removal

AT&T Phone Devilleque, 43
THRU: SATURDAYS, Ass't Chief

This is notice that I propose to remove you from your position as Air Traffic Control Specialist(Conter) GS-2152-3, at the New York ATC Center, Ronkonkoma, New York; not earlier than thirty (30) days from the date you receive this notice. The reason for this proposed action is as follows:

REASON: Failure to satisfactorily complete upgrade training requirements for the position of Manual/interphase Controller.

SPECIFICATION 1: You are assigned to position No. EA-5377. This is a developmental position which provides that you receive training and acquire competence in the performance of duties at the next higher grade level as this position. It additionally provides that failure to meet the requirements for the next higher grade level may be grounds for reassignment, demotion or separation.

You attended Kauai/Interplane training class H12 at this Facility from 23 August 1971 to 27 August 1971. You then attended Oklahoma City upgrade training from 31 August 1971 to 29 October 1971. Upon completion of training Oklahoma City, you returned to the New York Center and were provided with classroom training from 1 November 1971 to 3 December 1971, during which time you were administered simulated control problems of the type specified in the National Institute Training Program, Phase III (Agency Order 3120.9), and New York Center Order 3120.10, dated 7 December 1970. In accordance with the National Institute Training Program and Facility Order 3120.10, successful completion of a problem of 110 point complexity is required in order to pass a phase of the training program. At the end of your period of training on 3 December 1971, you had failed to meet this requirement. Examples of your unsatisfactory performance are as follows:

1 November 1971 - 110 points: On this date a check out problem of 110 points complexity was administered to you and the following discrepancies were noted: Pan American 63 enroute on V130 was descended at your direction from flight level 160 to maintain 11,000, this resulted in a conflict with Navy 56304 enroute on V130 maintaining 14,000 feet. No action was taken by you to insure the prescribed separation minimum necessary between these two aircraft at this time the Pan American aircraft passed out the altitude of the slower Navy craft. Additionally, Air Force 40250 was established in the holding pattern South May maintaining 16,000 feet. You directed Pan Am 617 to climb from 14,000 feet to 17,000 while AF 40250 was just crossing the South May intersection. You utilized no alternate separation criteria between the Eastern aircraft and the Air Force aircraft.

	CONCURRENCE
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	INITIALS/SIG.
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Page 2

Subsequently, on 1 November 1971, another problem was taken by you and you proceeded to allow Eastern 44 to cross the Kenton VOR at 9,000 feet enroute to the Woodstown VOR in conflict with November 31 Mike Delta also maintaining 9,000 feet passing the Kenton VOR. Less than the established separation criteria existed.

3 November 1971: You again received a 110 point problem in which you climbed Eastern 913, a Philadelphia departure to 14,000 feet which resulted in placing this aircraft in conflict with Pan American 63 maintaining 10,000 feet enroute to the Baltimore Airport on V268. Less than standard separation existed at the time the two aircraft's courses crossed. Additionally, procedural errors were committed by you in coordinating with adjacent areas and Centers. This caused some confusion to both yourself and the other areas you were coordinating with.

10 November 1971: You took a problem in sector 11 in which you cleared Eastern 183, a south bound Philadelphia departure to climb to flight level 240. This placed the flight in conflict with Eastern 8252, an aircraft enroute to the Philadelphia Airport via Sea Isle VOR descending to 8,000 feet from FL180. Additionally, you directed United 591 another Philadelphia departure proceeding to the Washington National Airport to climb to 10,000 feet which caused this aircraft to also pass thru Eastern 183's altitude with less than the standard separation criteria. In this problem you allowed Eastern 8252 to proceed into sector 10's area of jurisdiction without any prior coordination being effected. This resulted in an unsafe situation since you had no knowledge of the traffic situation in sector 10's area.

17 November 1971: A problem was given to you in which the following discrepancies were recorded: November 8846C was cleared into the holding pattern, by you, at the 42 nautical mile fix of the Sea Isle VOR on the 265 degree radial, when established in the holding pattern to climb from 6,000 feet to FL 200. By this action you placed November 8846C in conflict with November 62354, an aircraft enroute V29W V213 Kenton maintaining 11,000 feet. In addition, you also placed November 8846C in close proximity with Allegheny 651 enroute V29W V213 Woodstown, landing Philadelphia, descending from 15,000 feet to maintain 13,000 feet. At no time was there acceptable separation established by you between November 8846C and either November 62354 or Allegheny 651.

17 November 1971: An additional problem was given to you in which you cleared November 76Q, an aircraft enroute to North Philadelphia to descend to 7,000 feet which placed this aircraft at the same altitude (7,000 feet) maintained by November 31ED north bound on V16 to Millville. These aircraft had prescribed separation criteria. You then descended November 31ED to 5,000 feet which caused a conflict to occur with Allegheny 461, a Philadelphia departure climbing to 6,000 feet. These 2 aircraft were proceeding in opposite direction, "head on". In this problem you also delivered a departure clearance to November 775AC to depart the Millville Airport to climb to 6,000 feet. This action resulted in placing this aircraft in conflict with MAC 40611, a departure from Philadelphia, also climbing to 6,000 feet.

18 November 1971: You received a problem in which you cleared November 573DV, an aircraft enroute on V29, to climb to 8,000 feet from 6,000 feet. This action resulted in November 573DV climbing thru the altitude of November 15328 an aircraft maintaining 7,000 feet. 15328 was in close proximity to November 573DV. You then proceeded to issue further clearance to November 573DV to climb to 12,000 feet at the Kenton VOR while you had already issued instructions to Eastern 913 to climb to FL180 to cross

Page 3

39 miles south of the Sea Isle VOR 265 radial at 13,000 feet or below. No separation existed between these two aircraft because of your control instructions. Additionally, in climbing Eastern 913 to FL180 you caused a conflict between this aircraft and November 54117 an aircraft maintaining 14,000 feet. Further, on in the problem you issued control instructions to United 5191 to climb to 6,000 feet at the Kenton VOR which placed this aircraft in conflict with November 339Z climbing under your control also to 6,000 feet at the Kenton VOR.

19 November 1971: Another problem was taken by you in which you cleared Pan American 913, holding in the vicinity of the Kenton VOR to maintain 8,000 feet. You then cleared Allegheny 857 to climb to 8,000 feet in the area of the Kenton VOR placing these two aircraft in conflict with each other. In addition, you issued clearance instruction to November 464PG to climb from 6,000 feet to maintain 8,000 feet. This action resulted in November 464PG climbing thru the altitude of November 7613D who was maintaining 7,000 feet at the Kenton VOR. Also, you issued clearance to November 1925 to descend from 13,000 feet to maintain 7,000 feet while at the Kenton VOR. This clearance by you caused November 1925 to descend thru the altitude of Eastern 9334 maintaining 9,000 feet at the Kenton VOR.

23 November 1971: You had another problem administered to you in which you applied less than standard separation. You descended November 31ND from 9,000 feet to 4,000 feet in the vicinity of the Millville Airport thru the altitude of Allegheny 401, a Philadelphia departure climbing to 10,000 feet also in the vicinity of the Millville Airport. Additionally, you issued clearance to November 2135Y, an aircraft maintaining visual flight rules at 13,500 feet to descend to 12,000 feet. This placed this aircraft in conflict with National 401, maintaining 14,000 feet. Both aircraft were in the vicinity of the Kenton VOR.

Subsequently, on 24 November 1971 a problem was given to you in which you failed to adhere to prescribed separation minima in the following instances. You issued clearance instructions to November 1925P to descend to 7,000 feet from 11,000 feet in the vicinity of the Kenton VOR. This placed this aircraft in conflict with Eastern 9121, a Philadelphia departure crossing the Kenton VOR climbing to 8,000 feet. Additionally, you cleared American 269 to climb to 8,000 feet since both aircraft were in vicinity of the Kenton VOR.

You have the right to review any of the material relied upon to support the reasons for your proposed removal. You may be granted up to 15 hours of official time to review this material, to secure any affidavits you may wish to present and to prepare a written reply. If you wish to review any of the material or to obtain official time for the purpose stated above contact Mr. G. Skipman, Personnel Officer, Room 112, extension 206 or 207.

You may reply to this letter personally, in writing, or both, to me. You may also submit affidavits in support of your answer. You will be allowed fifteen (15) calendar days from the date you receive this letter to submit your reply.

Consideration will be given to extending this period if you submit a request stating your reasons for desiring more time. Full consideration will be given to any reply you submit. If you do not understand the reasons why your removal is proposed,

8 MAR 1972

Sign
Copy

Personnel

Notice of Proposed Removal

ATCS Louis Resler, 1B
 THEU: SATCS W. Egan, Ass't Chief

This is notice that I propose to remove you from your position as Air Traffic Control Specialist (Center) OA-2152-3, at the New York ATC Center, Brooklyn, New York; not earlier than thirty (30) days from the date you receive this notice. The reason for this proposed action is as follows:

REASON: Failure to satisfactorily complete upgrade training requirements for the position of Manual/Interphone Controller.

SPECIFICALLY: You are assigned to position No. MA-0077. This is a developmental position which provides that you receive training and acquire competence in the performance of duties at the next higher grade level at this Facility. It additionally provides that failure to meet the requirements for the next higher grade level may be grounds for reassignment, demotion or separation.

You attended Manual/Interphone training class 112 at this Facility from 23 August 1971 to 27 August 1971. You then attended Oklahoma City upgrade training from 31 August 1971 to 29 October 1971. Upon completion of training at Oklahoma City, you returned to the New York Center and you were assigned to laboratory training from 1 November 1971 to 3 December 1971, during which time you were administered simulated control problems of the type specified in the National Enroute Training Program, Phase II (Agency Order 3120.9), and New York Center Order 3120.10, dated 7 December 1970. In accordance with the National Enroute Training Program and Facility Order 3120.10, successful completion of a problem of 110 point complexity is required in order to pass this phase of the training program. At the end of your period of laboratory training on 3 December 1971, you had failed to meet this requirement. Examples of your unsatisfactory performance are as follows:

1 November 1971: Naa 54127 was approaching the Hobbs intersection at an assigned altitude of 15,000 feet. Eastern 8121, a Philadelphia departure, was flying a crossing course and converging with Naa 54127 when you cleared him to climb and maintain flight level 240, taking him thru the altitude of Naa 54127 without providing the standard separation required. This resulted in a traffic conflict.

You had Allegheny 651 holding at the Woodstown holding pattern at an assigned altitude of 9,000 feet. You turned Eastern 8252 over to Philadelphia approach control's frequency at an assigned altitude of 10,000 feet and advised the approach controller that Eastern 8252 was released to his control for descent. Philadelphia, in turn, descended Eastern 8252 at Woodstown thru Allegheny 651. You failed to provide standard separation between these aircraft which resulted in a traffic conflict.

Page 2v

19 November 1971: You cleared Allegheny 401, a convair 580, a departure from Philadelphia Airport to climb to 6,000 feet. You subsequently cleared Eastern 323 a Boeing 727, also a departure off Philadelphia proceeding on the same route as the first aircraft, to climb and maintain 6,000 feet. You failed to provide standard longitudinal or vertical separation between these aircraft. This resulted in a traffic confliction.

American 46 was proceeding over the Kenton VOR enroute to Philadelphia Airport at an assigned altitude of 15,000 feet. National 401 was enroute to the Washington D. C. Airport via the Kenton VOR, vector 16 at an assigned altitude of 16,000 feet. You descended National 401 to 14,000 feet failing to provide standard longitudinal or vertical separation between these aircraft. This resulted in a traffic confliction.

19 November 1971: You were holding Pan 2251 at the Kenton VOR at an assigned altitude of 14,000 feet. Eastern 322 who was southwest bound approaching the Kenton VOR was descended by you from 16,000 feet to 14,000 feet. You did not apply standard separation between these two aircraft. This resulted in a traffic confliction.

You descended Eastern 390 at the Kenton VOR to 9,000 feet. Directly behind him was Arby 73003 also at 9,000 feet. You failed to provide standard separation between these aircraft. This resulted in a traffic confliction.

19 November 1971: Pan 54117 crossed the Hobbs intersection at an assigned altitude of 14,000 feet. Eastern 913 was on a converging course and you cleared the flight to climb and maintain flight level 200. You did not provide standard longitudinal or vertical separation between these aircraft. This resulted in a traffic confliction.

Eastern 313, a Philadelphia arrival was holding at the Kenton VOR at an assigned altitude of 6,000 feet. You cleared American 227, who was a departure proceeding over the Kenton VOR to climb and maintain 6,000 feet. You did not provide standard separation required. This resulted in a traffic confliction.

You had a total of eight (8) traffic conflicts on this criterion test #24.

23 November 1971: You cleared Allegheny 640, at the Kenton VOR, to descend and maintain 14,000 feet. You also cleared Pan American 63 to descend and maintain 14,000 feet. You did not provide standard longitudinal or vertical separation between these aircraft at Kenton VOR. This resulted in a traffic confliction.

Pacer 06 crossed the Hobbs intersection at an assigned altitude of 10,000 feet. You cleared Overseas National 201 at the Hobbs intersection to climb, from 5,000 feet to 10,000 feet. You did not provide standard longitudinal or vertical separation between these aircraft. This resulted in a traffic confliction.

23 November 1971: You cleared Pan 54127 to hold at the Kenton VOR at assigned altitude of 13,000 feet. You then cleared Eastern 9121 from 14,000 feet to FL 240 at a position which was not clear of Pan 54127's holding pattern. You failed to establish standard separation minima between both aircraft involved. This resulted in a traffic confliction.

You cleared Altair 332, passing the Kenton VOR, to climb and maintain 6,000 feet and he left 6,000 feet climbing as cleared. United 591 passed Kenton VOR and you cleared him to climb from 6,000 feet to 10,000 feet. You failed to provide positive separation between these two aircraft. This resulted in a traffic confliction. [] 70

Page 3

2427V-103: While below administered a 110 point evaluation problem you were controlling the departure from the Philadelphia Airport. Both aircraft were proceeding on the same route of flight. The lead aircraft was Nen 545 Yankee, followed by National 517. Nen 545 Yankee was maintaining 9,000 feet and National 517 was maintaining 8,000 feet. Without utilizing the prescribed minimum separation standards you climbed Nen 545 Yankee through altitude of National 517, resulting in a traffic conflict.

You descended Eastern 670 enroute on Victor 231 to 13,000 feet. At the same time you had National 517 at an assigned altitude of 14,000 feet. You descended the Eastern aircraft thru the National aircraft without applying prescribed separation standards. This resulted in a traffic conflict in the control area.

You descended Altair 103 enroute on Victor 213 to 9,000 feet over Boston VOR. Nen 5427V was right behind Altair 103 also maintaining 9,000 feet. You did not apply standard separation minima between these two aircraft while effecting altitude change. This resulted in a traffic conflict.

You had a total of four (4) traffic conflicts on this criterion test #23.

You have the right to review any of the material relied upon to support the reasons for your proposed removal. You may be granted up to 16 hours of official time to review this material, to secure any affidavits you may wish to present and to prepare a written reply. If you wish to review the material or to obtain official time for the purpose stated above contact Mr. G. Shipman, Personnel Officer, Room 112, extension 206 or 207.

You may reply to this letter personally, in writing, or both, to me. You may also submit affidavits in support of your answer. You will be allowed fifteen (15) calendar days from the date you receive this letter to submit your reply.

Consideration will be given to extending this period if you submit a request stating your reasons for desiring more time. Full consideration will be given to any reply you submit. If you do not understand the reasons why your removal is proposed, contact Mr. G. Shipman, Personnel Officer, Room 112, extension 206 or 207, for further information.

As soon as possible after your reply is received or after expiration of the fifteen (15) day limit, if you do not reply, a written decision will be issued to you. You will remain in an active duty status at your present grade and salary during the advancement period.

LOUIS C. POL
(Retired) Facility Chief
New York Center

71
PLEASE SIGN AND RETURN TO CHIEF, NY ARTCC IMMEDIATELY.

SIGNATURE: John C. Pol DATE: 3/18/72

Shipman/ja/2/23/72

cc:

EA-540, EA-15, IAF

TACG, Pers. A/C, Sign Copy

A 19

8 MAR 1972
11:00 AM

Personnel

Notice of Proposed Removal

P.W.

ATCS John Shannon, 6D
THRU: SATCS B. Dempo, Ass't Chief

This is notice that I propose to remove you from your position of Air Traffic Control Specialist (Center) GS-2152-9, at the New York ARTC Center, Rockaway, New York; not earlier than thirty (30) days from the date you receive this notice. The reason for this proposed action is as follows:

REASON: Failure to satisfactorily complete upgrade training requirements for the position of Manual/Interphone Controller.

SPECIFICATION 1: You are assigned to position No. EA-8377. This is a developmental position which provides that you receive training and acquire competence in the performance of duties at the next higher grade level at this Facility. It additionally provides that failure to meet the requirements for the next higher grade level may be grounds for reassignment, demotion or separation.

You attended Manual/Interphone training class 1113 at this Facility from 26 October 1971 to 5 November 1971. You then attended Oklahoma City upgrade training from 8 November 1971 to 7 January 1972. Upon completion of training at Oklahoma City, you returned to the New York Center and you were assigned to laboratory training from 10 January 1972 to 11 February 1972, during which time you were administered simulated control problems of the type specified in the National Enroute Training Program, Phase II (Agency Order 3120.9), and New York Center Order 3120.10, dated 7 December 1970. In accordance with the National Enroute Training Program and Facility Order 3120.10, successful completion of a problem of 110 point complexity is required in order to pass this phase of the training program. At the end of your period of laboratory training on 11 February 1972, you had failed to meet this requirement. Examples of your unsatisfactory performance are as follows:

1. 11 January 1972: You were administered an evaluation problem on sector 33, in which you failed to provide adequate separation on crossing traffic. N2181, south bound on V35 at 9,000 feet climbing to 10,000 feet and CPLXN east bound at 9,000 feet. These aircraft were only 2 minutes apart at Stonyfork. In the same problem, in a similar circumstance you failed to provide any separation for enroute west bound traffic N731 at 12,000 feet and landing traffic descending from 13,000 feet to 7,000 feet (Mohawk 322) north bound on V35, crossing 35 miles west of Binghamton VOR.
2. 20 January 1972: 75 points: You were administered a control problem on sector 33 during which you failed to adequately separate N7056L at 8,000 feet over Binghamton and N4198P also at 8,000 feet, 5 minutes behind N7056L. You also failed to provide any positive separation between N6758L a Binghamton departure climbing to

Page 2

9,000 feet via V270 and V34 enroute to Westchester County Airport and an enroute aircraft at 7,000 feet on V35 proceeding in the same direction. Both of these situations resulted in less than standard separation.

3. 20 January 1972 - 75 points: You again were administered a control problem on sector 33. You issued a clearance to 4800 to descend to 8,000 feet with the Elmira VORTAC as a clearance limit. N400U estimated Elmira at 1120 GRT. N1913 maintaining 8,000 feet, westbound, estimated Elmira at 1125 GRT. Although you had but one (1) minute on crossing courses, you took no action to provide the required separation.

You also had no positive separation provided between N6768L eastbound on V34 estimating over Hancock VOR at 1127 GRT, and northbound traffic on V449 estimating to cross V34 at 1125 GRT (Center estimate) ATP requires 10 minutes on crossing courses.

4. Your first 110 point criterion test problem on sector 33 was administered on 31 January 1972. During this problem you failed to provide separation for N3003N westbound on V126 at 10,000 feet and N7035L, southbound on V423 also at 10,000 feet. In addition, a similar situation existed between N5111, eastbound at 11,000 feet on V116 and N4836 north-bound on V423 also at 11,000 feet.

5. 1 February 1972: During a criterion test problem, you failed to separate AL791 and N880. AL791 was westbound on V115 at 8,000 feet and N880 was issued a clearance to descend from 9,000 feet to 7,000 feet eastbound on V115 through the AL791's altitude. You also failed during this problem to have 3800 enter the next sector at the coordinated altitude, and allowed AL380 to enter Boston Center's area at an altitude other than coordinated.

6. On a criterion problem administered on 1 February 1972 you failed to provide adequate separation for N797R at 11,000 feet and N760 on a crossing course at 11,000 feet climbing to 13,000 feet. You were then remiss, in that you turned 760 over to Boston Center at 13,000 feet when 11,000 feet was the coordinated altitude. It was noted that during this problem you fell well behind the clock.

7. 2 February 1972: A criterion test on sector 33 was administered. During this problem you failed to have EA373 enter the next area at the coordinated altitude. In addition, you cleared N9188V to enter the Boston area at the wrong altitude. Both of these situations were dangerous since those altitudes were not protected. You allowed EA582 and AL5871 to converge on Hancock at the same altitude without providing adequate separation.

You also descended N271E in the Elmira holding pattern through the airspace of N7262 enroute at 11,000 feet.

You have the right to review any of the material relied upon to support the reasons for your proposed removal. You may be granted up to 16 hours of official time to review this material, to secure any affidavits you may wish to present and to prepare a written reply. If you wish to review the material or to obtain official time for the purpose stated above contact Mr. G. Shigem, Personnel Officer, Room 112 extension 203 or 207.

Page 3

You may reply to this letter personally, in writing, or both, to me. You may also submit affidavits in support of your answer. You will be allowed fifteen (15) calendar days from the date you receive this letter to submit your reply.

Consideration will be given to extending this period if you submit a request stating your reasons for desiring more time. Full consideration will be given to any reply you submit. If you do not understand the reasons why your removal is proposed, contact Mr. G. Shipman, Personnel Officer, Room 112, extension 206 or 207, for further information.

As soon as possible after your reply is received or after expiration of the fifteen (15) day limit, if you do not reply, a written decision will be issued to you. You will remain in an active duty status at your present grade and salary during the advance notice period.

LOUIS C. POL
Facility Chief (Acting)
New York Center

PLEASE SIGN AND RETURN TO CHIEF, NY ARTCC IMMEDIATELY.

SIGNATURE: _____ DATE: _____

Shipman/jn/2/16/72

cc:

EA-540

EA-15

EMP

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TRNG

A/C

Sign. Copy

A 22

EA 14

2 AUG 1972

OPL

Personnel

Notice of Proposed Removal

OFFICIAL USE ONLY

ATCS Warren McDowell, 3B
THRU: SATCS W. Papadeas, Ass't Chief

This is notice that I propose to remove you from your position as Air Traffic Control Specialist (Center) GS-2152-11, at the New York ARTC Center, Ronkonkoma, New York; not earlier than thirty (30) days from the date you receive this notice. The reason for this proposed action is as follows:

REASON: Failure to satisfactorily complete upgrade training requirements for the position of Radar Controller/Limited Developmental.

SPECIFICATION 1: You are assigned to position No. EA-8375. This is a developmental position which provides that you receive training and acquire competence in the performance of duties at the next higher grade level at this Facility. It additionally provides that failure to meet the requirements for the next higher grade level may be grounds for reassignment, demotion or separation.

You attended Limited Radar Training class LR-7 from 5 April 1971 to 30 April 1971 at this Facility. During this classroom/laboratory phase you received approximately 140 hours of instruction in the fundamentals and techniques of radar control. Upon completion of this classroom phase you were assigned to formal radar on-the-job training at crew level from 3 May 1971 to 6 August 1971; during which time you were to have completed the check out requirements for a limited radar rating in your area of specialization, in accordance with New York Center Orders 3120.1, dated 16 March 1970 and 3120.12, dated 19 January 1971, and the requirements contained in New York Center Training Task Force Report, dated 10 November 1969. However, you did not achieve any check outs during your period of mandatory OJT and your team supervisor recommended and was granted approval of an extension of your training from 28 January 1972 until 25 February 1972. At the completion of this extension you received additional training until 19 March 1972. During both extension periods you again failed to achieve any check outs. Examples of your unsatisfactory performance during your period of mandatory OJT and the extension periods are as follows:

12 February 1972: While working the R11/12 position you descended an aircraft in sector 9's area without proper coordination.

19 February 1972: An Eastern Airlines flight inbound to the Philadelphia Airport was issued a heading of thirty degrees and then was cleared to descend through the altitudes of two other aircraft who were southwest bound. The instructor had to relieve you from the frequency at this time. 100

24 February 1972: On this date two aircraft were proceeding on airway V139 and both were maintaining nine thousand feet. One of them, ALKID 15, was overtaking the other, Nau 715D, and no action was taken by you until the instructor brought this potential conflict to your attention. Also a Nau 14206 was advised he was under radar contact when he reported twenty

Page 2

miles north of Salisbury, Md. VOR and he had no Distance Measuring Equipment.

You cleared a SAIFI 1843 to proceed direct to the Atlantic City, N. J. VOR from the Waterloo, Delaware VOR and descended this aircraft to maintain six thousand feet through Nan 14206, non-radar identified, maintaining nine thousand feet on Victor airway 139 southwest of the Sea Isle, N. J. VOR.

25 February 1972: A Military Air Command 60154 was proceeding eastbound from Washington, maintaining seventeen thousand feet. Nan 331JR was cleared from the New Castle, Delaware Airport southbound climbing to twenty-eight thousand feet. No action was taken by you to separate these aircraft until the instructor controller relieved you of the frequency and leveled off Nan 331JR below the MAC aircraft.

1 March 1972: A Nan 7803M proceeding from Washington was over the Kenton VOR eastbound at nine thousand feet. At the same time an Allegheny Airlines flight 950 was proceeding from the Salisbury, Md. VOR to the Woodstown, N. J. VOR descending to eight thousand feet. You issued a clearance to Nan 7803M to make a turn which would put him behind the Allegheny Airlines flight. This instruction was not sufficient to separate the two aircraft and the instructor controller had to remedy the situation. In addition, on this date a Delta Airlines flight 580 proceeding to the Philadelphia, Pa. Airport on jet airway 37 was descended through the altitude of an Eastern Airlines flight 185 who was southwest bound on Victor airway 16. Not enough of a turn was given to insure separation between these two aircraft and again you had to be relieved from the position of operation. Later the instructor controller again had to take the frequency from you. This time a Nan 7775 at ten thousand feet was heading direct to the Woodstown, N. J. VOR from the Hobbs, Md. intersection. A Nan 2 was over the Kenton, Delaware VOR southwest bound also at ten thousand feet. This potential conflict had to be pointed out to you and still not enough of a turn was given to insure separation.

10 March 1972: The instructor controller had to intervene twice in order to separate aircraft which were being controlled by you. In the first instance a N1505S at eight thousand feet was proceeding southwest bound on Victor airway 16 and was over the Kenton, Delaware VOR. At this time, Nan 608AR was ten miles southwest of the Kenton, Delaware VOR on Victor airway 16 proceeding northeast bound. Nan 608AR now was cleared to maintain eight thousand feet. In the second instance, Allegheny Airlines flight 968 proceeding northbound between the Salisbury, Md. VOR and the Woodstown, N. J. VOR at ten thousand feet was descended to eight thousand feet while the radar target was merged with the radar target of Nan 21M who was proceeding to the Sea Isle, N. J. VOR eastbound maintaining nine thousand feet. One other noted discrepancy involved Eastern Airlines Flight 940 proceeding from Sea Isle, N. J. VOR direct to the Woodstown, N. J. VOR direct to the Philadelphia, Pa. Airport at ten thousand feet was descended over the Leesburg, N. J. intersection without coordination with sector 12.

You have the right to review any of the material relied upon to support the reasons for your proposed removal. You may be granted up to 16 hours of official time to review this material, to secure any affidavits you may wish to present and to prepare a written reply. If you wish to review the material or to obtain official time for the purpose stated above contact Mr. Shipman, Personnel Officer, Room 112, extension 3405.

23 APR 1972

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Personnel

Decision to Remove

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b7d

ATCS Thomas Bevilacque

THRU: SATCS M. Sechik, Ass't Chief

By letter of 8 March 1972 you were advised by Mr. Louis C. Pol, Acting Facility Chief, New York Center, of your proposed removal. I have considered your personal reply to Mr. Pol on 24 April 1972, your letter of 21 March 1972, and in addition, all the facts related to your failure to satisfactorily complete upgrade training requirements for the position of Manual/Interphone Controller.

I find that the reasons and specific criteria contained in the letter of 8 March 1972 are fully supported by the evidence and warrant your removal to promote the efficiency of the service. It is, therefore, my decision that you be removed effective close-of-business Friday 5 May 1972.

You have the right to appeal this action to the FAA or to the Director, New York Region, U. S. Civil Service Commission, Federal Building, 26 Federal Plaza, New York, New York 10007, or first to the FAA and then to the Civil Service Commission in accordance with the following:

(a) If you appeal first to the Civil Service Commission, you will have no right to appeal to the FAA. In order for your appeal to be considered by the Commission, it must (1) be in writing, (2) give your reasons for contesting the removal with such offer of proof and pertinent documents as you are able to submit, and (3) be submitted no later than 15 calendar days after the effective date of your removal.

(b) If you appeal first to the FAA, you will not be entitled to appeal to the Commission until after a decision on your appeal to the FAA is made. However, if no decision on the appeal has been made within 60 calendar days after it was filed, you may elect to terminate your appeal to the FAA by appealing to the Commission.

An appeal to the FAA should be submitted through me to Mr. George M. Gary, Appeals Official. An appeal must (1) be in writing, (2) set forth the basis for your appeal, (3) state whether you desire a hearing in connection with your appeal, and (4) be submitted no later than 15 calendar days after the effective date of your removal.

Mr. C. Shipman, Personnel Officer, New York Center, (516/588-1000 ext. 206) will give you all further information you may desire about appeals procedures to the FAA or to the Civil Service Commission.

BILLIE H. VINCENT
Facility Chief
New York Center

PLEASE SIGN AND RETURN TO CHIEF, NY ARTCC IMMEDIATELY.
SIGNATURE: Tom Smith DATE: 5-1-72 '76

19 APR 1972

Sgt
Cop

Personnel

Decision to Remove

AMCC Lewis Peeler

THRU: SATCC W. Dym, Asst Chief

By letter of 8 March 1972 you were advised by Mr. Lewis C. Peeler, Acting Facility Chief, New York Center, of your proposed removal. I have considered your personal reply to Mr. Peeler of 7 April 1972, your written reply of 16 March 1972, and in addition, all the facts related to your failure to satisfactorily complete upgrade training requirements for the position of Manual/Interphone Controller.

I find that the reason and specification contained in the letter of 8 March 1972 are fully supported by the evidence and warrant your removal to promote the efficiency of the service. It is, therefore, my decision that you be removed effective close-of-business Friday, 28 April 1972.

You have the right to appeal this action to the PAA or to the Director, New York Legion, U. S. Civil Service Commission, Federal Building, 26 Federal Plaza, New York 10007, or first to the PAA and then to the Civil Service Commission in accordance with the following:

- If you appeal first to the Civil Service Commission, you will have no right to appeal to the PAA. In order for your appeal to be considered by the Commission, it must (1) be in writing, (2) give your reasons for contesting the removal, with such offer of proof and pertinent documents as you are able to submit, and (3) be submitted no later than 15 calendar days after the effective date of your removal.
- If you appeal first to the PAA, you will not be entitled to appeal to the Commission until after a decision on your appeal to the PAA is made. However, if no decision on the appeal has been made within 60 calendar days after it was filed, you may elect to terminate your appeal to the PAA by appealing to the Commission.

An appeal to the PAA should be submitted through me to Mr. George M. Gary, Appeals Official. An appeal must (1) be in writing, (2) set forth the basis for your appeal, (3) state whether you desire a hearing in connection with your appeal, and (4) be submitted no later than 15 calendar days after the effective date of your removal.

Mr. G. Shipman, Personnel Officer, New York Center, (516/523-1000 ext. 206) will give you all further information you may desire about appeals procedures to the PAA or to the Civil Service Commission.

119

RELEASER: R. VINCENT
Facility Chief
New York Center

PLEASE SIGN AND RETURN TO CHIEF, NY AMCC IMMEDIATELY.
SIGNATURE: *Shirley* Dated: 17 APR 1972

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*Sign
Copy*

APR 25 1972

Personnel

Removal Decision

ATCS John Shannon
THEIR: SATCS S. Wugalter, Ass't Chief

By letter of 19 April 1972 I advised you that it was my decision that your removal would be effective close-of-business Friday, 28 April 1972. It has come to my attention that you have been on annual leave for two (2) weeks and will not return to duty until 28 April 1972.

I have, therefore, extended the date of your removal to close-of-business Friday, 5 May 1972. Your appeal rights as outlined in my letter of 19 April 1972 remain the same.

BILLIE H. VINCENT
Facility Chief
New York Center

PLEASE SIGN AND RETURN TO CHIEF, NY ARTCC IMMEDIATELY.

SIGNATURE: S. H. Vincent DATE: 1 May 1972

Shipman/jn/4/25/72

cc:

EA-540

EA-15

EMF

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Sign. Copy

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Pers.

Personnel

19 April 1972

Decision to Remove

ATCS John Shannon
 TELRU: SATCS S. Wugulter, Ass't Chief

By letter of 8 March 1972 you were advised by Mr. Louis C. Pol, Acting Facility Chief, New York Center, of your proposed removal. I have considered your personal reply to Mr. Pol of 27 March 1972, your written reply of 15 March 1972, and in addition, all the facts related to your failure to satisfactorily complete upgrade training requirements for the position of Manual/Interphone Controller.

I find that the reason and specification contained in my letter of 8 March 1972 are fully supported by the evidence and warrant your removal to promote the efficiency of the service. It is, therefore, my decision that you be removed effective ^{the} close-of-business Friday, 28 April 1972.

You have the right to appeal this action to the FAA or to the Director, New York Region, U.S. Civil Service Commission, Federal Building, 26 Federal Plaza, New York, New York 10037, or first to the FAA and then to the Civil Service Commission in accordance with the following:

(a) If you appeal first to the Civil Service Commission, you will have no right to appeal to the FAA. In order for your appeal to be considered by the Commission, it must (1) be in writing, (2) give your reasons for contesting the removal with such order of proof and pertinent documents as you are able to submit, and (3) be submitted no later than 15 calendar days after the effective date of your removal.

(b) If you appeal first to the FAA, you will not be entitled to appeal to the Commission until after a decision on your appeal to the FAA is made. However, if no decision on the appeal has been made within 60 calendar days after it was filed, you may elect to terminate your appeal to the FAA by appealing to the Commission.

An appeal to the FAA should be submitted through me to Mr. George M. Gandy, Appeals Official. An appeal must (1) be in writing, (2) set forth the basis for your appeal, (3) state whether you desire a hearing in connection with your appeal, and (4) be submitted no later than 15 calendar days after the effective date of your removal.

Page 2

Mr. G. Shipman, Personnel Officer, New York ARTC Center, (516-58891000 ext. 205, 207) will give you all further information you may desire about appeals procedures to the FAA or to the Civil Service Commission.

BILLIE H. VINCENT
Facility Chief
New York Center

Shipman/jn/205/4/14/72
cc:
EA-540
EA-15
EMF
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TRNG
Lapine
Peru.
3750

4 EA-14

Sign

Copy

A 29

20 SEP 1972

ZBY-10

Decision to Remove

OFFICIAL USE ONLY

Warren McDowell, 33

THRU: SATCS W. Papadeas, Ass't Chief

By letter of 2 August 1972, you were advised of your proposed removal. I have considered your personal reply of 8 September 1972, your written reply dated 8 September 1972, and in addition, all the facts related to your failure to satisfactorily complete upgrade training requirements for the position of Controller/Limited Developmental.

I find that the reason and specification contained in the 2 August 1972, letter of proposed removal are fully supported by the evidence and warrant your removal to promote the efficiency of the service. It is, therefore, my decision that you be removed effective close-of-business Friday, 22 September 1972.

You have the right to appeal this action to the FAA or to the Director, New York Region, U. S. Civil Service Commission, Federal Building, 26 Federal Plaza, New York, New York, 10007, or first to the FAA and then to the Civil Service Commission in accordance with the following:

(a) If you appeal first to the Civil Service Commission, you will have no right to appeal to the FAA. In order for your appeal to be considered by the Commission, it must (1) be in writing, (2) give your reasons for contesting the removal, with such offer of proof and pertinent documents as you are able to submit, and (3) be submitted no later than 15 calendar days after the effective date of your removal.

(b) If you appeal first to the FAA, you will not be entitled to appeal to the Commission until after a decision on your appeal to the FAA is made. However, if no decision on the appeal has been made within 60 calendar days after it was filed, you may elect to terminate your appeal to the FAA by appealing to the Commission.

An appeal to the FAA should be submitted through me to Mr. George H. Gary, Appeals, Official. An appeal must (1) be in writing, (2) set forth the basis for your appeal, (3) state whether you desire a hearing in connection with your appeal, and (4) be submitted no later than 15 calendar days after the effective date of your removal.

Mr. G. Shipman, Personnel Officer, New York Center, (516/737-3405) will give you all further information you may desire about appeals procedures to the FAA or to the Civil Service Commission.

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OFFICIAL USE ONLY

BILLIE H. VINCENT
Facility Chief
New York Center

PLEASE SIGN AND RETURN TO CHIEF, NY ARTC CENTER, IMMEDIATELY
SIGNATURE: Billie H. Vincent DATE: 10/12/72

5/11/1972

Personnel

Decision to Remove

BEST COPY AVAILABLE

ATCS Arnold Hale

FROM: ATCS W. Radomski, Ass't Chief

By letter of 9 March 1972 you were advised by Mr. Louis C. Pol, Acting Freight Chief, New York Center, of your proposed removal. I have considered your personnel reply of 8 May 1972 and the documents you submitted in connection, I have considered all the facts related to your failure to satisfactorily complete upgrade training requirements for the position of Manual/Interlocking Controller.

I find that the reasons and documentation contained in the letter of 9 March 1972 are fully supported by the evidence and warrant your removal to promote the efficiency of the service. It is, therefore, by decision that you are removed effective close-of-business Friday, 19 May 1972.

You have the right to appeal this action to the FAA or to the Director, New York Region, U. S. Civil Service Commission, Federal Building, 26 Federal Plaza, New York, New York 10007, or first to the PAA and then to the Civil Service Commission in accordance with the following:

(a) If you appeal first to the Civil Service Commission, you will have the right to appeal to the FAA. In order for your appeal to be considered by the Commission, it must (1) be in writing, (2) give your reasons for contesting the removal with such offer of proof and pertinent documents as you are able to submit, and (3) be submitted no later than 15 calendar days after the effective date of your removal.

(b) If you appeal first to the PAA, you will not be entitled to appeal to the Commission until after a decision on your appeal to the PAA is made. If no decision on the appeal has been made within 60 calendar days after it was filed, you may elect to terminate your appeal to the PAA by appealing to the Commission.

An appeal to the FAA should be submitted through me to Mr. George M. Corr, Appeals Official. An appeal must (1) be in writing, (2) set forth the basis for your appeal, (3) state whether you desire a hearing in connection with your appeal, and (4) be submitted no later than 15 days after the effective date of your removal.

Mr. G. Chapman, Personnel Officer, New York Center (318-590-1000 ext. 221) will give you all further information you may desire about appeals procedures to the FAA or to the Civil Service Commission.

ENR

CONCURRENCE
RTG. SYMBOL
714-1A
INITIALS/S.G.
DATE
5/11
RTG. SYMBOL
INITIALS/S.G.
INITIALS/S.G.
INITIALS/S.G.

SIMON R. VITALE
FAA Form 1286, 11/64
New York Center

PLS REFER TO THE COPY OF THIS DOCUMENT TO CHIEF, NY ATCS IMMEDIATELY.
SIGNATURE: DATE: 5/11/72

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UNITED STATES CIVIL SERVICE COMMISSION
BOARD OF APPEALS AND REVIEW
Washington, D. C. 20415

D E C I S I O N

IN THE MATTER OF

Arnold Haje

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) TYPE CASE: Adverse Action
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INTRODUCTION

The appellant, through counsel, has appealed to the Board of Appeals and Review from a decision issued on March 13, 1973 by the Commission's New York Regional Office. The Regional Office sustained the action of the Department of Transportation, Federal Aviation Administration, Jamaica, New York, removing the appellant from his position of Air Traffic Control Specialist (Center), GS-2152-9, effective May 19, 1972.

STATEMENT OF THE CASE

By letter dated March 9, 1972, the appellant was given advance notice of a proposed action (removal) based upon the charge that he failed to satisfactorily complete upgrade training requirements for the position of Manual/Interphone Controller, as required by his job description. The notice included seven examples of the appellant's failure to complete training requirements.

The appellant made an oral reply to the charges on May 8, 1972. This oral reply was summarized and was included in the appellate record. On May 12, 1972, the agency issued its notice of decision to remove the appellant effective May 19, 1972. The agency found the charge fully supported by the evidence and that it warranted

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the removal of the appellant. The removal was effected on May 19, 1972. The appellant appealed this decision within the agency, and a hearing was held on August 29, 1972. The appellant was advised, by letter dated October 27, 1972, that the decision to remove him was sustained. The appellant, through his attorney, filed an appeal with the Commission's Regional Office on November 8, 1972.

FIRST APPELLATE LEVEL DECISION

The Regional Office conducted a hearing on the appellant's removal on February 23, 1973. The Region, based on the record, found that the agency had complied with all of the procedural requirements of Part 752, Subpart B, of the Civil Service Regulations. With respect to the merits, the Region found that the reason and specification cited in the advance notice of proposed removal was sustained by the preponderance of the evidence, and that the agency's action was not unreasonable, arbitrary, or capricious and was warranted for such cause as would promote the efficiency of the service.

REPRESENTATIONS TO THE BOARD OF APPEALS AND REVIEW

In his appeal to the Board, through counsel, the appellant contended that his procedural rights had been violated in that the agency failed to provide him with a full evidentiary hearing prior to his removal; the agency had decided to remove the appellant even before he had replied to the charges; and that he was denied the opportunity to cross examine certain employees of the agency whom the agency had failed to provide as witnesses.

The appellant further contended that the action taken by the agency was in excess of the agency's statutory authority and jurisdiction; that its action was discriminatory, arbitrary, capricious and unreasonable; and the agency failed to establish the competence of the employees who acted as instructors to instruct and evaluate the appellant.

ANALYSIS AND FINDINGS

Regarding the appellant's contention that he had a right to a full evidentiary hearing prior to his removal, the Board notes that section 7512 of Title 5 of the United States Code provides that a preference eligible employee against whom an adverse action is proposed is entitled to a reasonable time for answering the notice personally and in writing and for furnishing affidavits in support of his answer. Pursuant to this section, section 752.202(b) of the Civil Service Regulations provides, in part, that:

The right to answer personally includes the right to answer orally in person by being given a reasonable opportunity to make any representations which the employee believes might sway the decision on his case, but does not include the right to a trial or formal hearing with examination of witnesses.

The Board therefore finds that the appellant's right to a hearing was not violated by the agency since it provided him with an opportunity to answer the charges as required under applicable statute and regulation.

In support of his contention that he had a right to a formal hearing prior to his termination, the appellant cited the decision in the case of Kennedy v. Sanchez, 72 C 771 (N. D. Ill. October 24, 1972). The Board takes note of the decision in Kennedy v. Sanchez, but does not find it controlling in the appellant's case, since Commission regulations currently permit the actions taken with regard to hearings, in this case. Therefore, the fact that the appellant was not afforded an agency hearing prior to his removal is not deemed to be a fatal procedural error in this case.

The appellant has contended that the agency's statement in the advance notice that "This is advance notice that I propose to remove you from your position . . ." was evidence that the agency had made its decision to remove the appellant before he had responded to the charge against him. The Board notes that Subchapter S4-4 of Supplement 752-1 of the Federal Personnel Manual (FPM) provides that:

A notice must make it clear that it concerns only a proposed action and not a matter already decided. . . . This can be made clear by a statement that it is a notice of proposed adverse action and that the employee's answer will be considered before a decision is reached.

The subchapter further provides that "The advance notice must state the most severe action proposed." The record shows that the agency, in the advance notice, advised the appellant of his right to reply to the charges and that "Full consideration will be given to any reply you submit." The Board therefore finds, on the basis of the record, that the agency complied with the procedural requirements of the Civil Service Regulations, and that substantial evidence has not been submitted which would support a finding that the agency had made its determination prior to its consideration of the appellant's reply.

With respect to the appellant's contention that he was denied the right to cross examine agency employees regarding his unsatisfactory performance on problems used to evaluate employees, the Board notes that Subchapter S3-2 of Chapter 772 of the FPM provides, in part, that:

.The parties are responsible for furnishing the Commission office all evidence which they have or can obtain in support of their case and in addition must respond to requests from the Commission office for information or evidence which that office considers necessary for a proper adjudication of the appeal.

The record indicates that by letter dated January 31, 1973, the Commission's first appellate level advised the appellant that he was responsible for securing witnesses, and that the first appellate level would assist him in obtaining witnesses, although it did not have subpoena power. The appellant, in a statement dated January 24, 1973, had requested that certain employees, other than those he contends that he was denied the right to cross-examine, be available as witnesses. The record does not indicate that the appellant requested at any time, before or after the January 31, 1973 letter, that the employees responsible for instructing and evaluating him be made available as witnesses.

In addition, the Board notes that Subchapter S3-2 also provides that "An agency shall make its employees available as witnesses at the hearing when (a) requested to do so by the Commission after consideration of a request by the appellant or the agency. . . ." [Emphasis added] The Board finds that the appellant did not request that the employees who instructed and evaluated him be made available as witnesses at the hearing, and that the agency was not obligated, as the appellant contends, to make these employees available as witnesses. The Board therefore finds that the appellant's inability to cross-examine these witnesses was not the result of any procedural error.

The Board of Appeals and Review, having fully considered the entire record, finds, as did the first appellate level, that the agency fully complied with the procedural requirements of Part 752, Subpart B of the Civil Service Regulations in separating the appellant from his position. The Board further finds that the hearing afforded the appellant by the Commission's Regional Office was conducted in compliance with applicable rules and regulations.

With respect to the merits of the case, the Board notes that the Commission's Position Classification Standard for the position of Air Traffic Control Specialist (Center), GS-2152, provides that "At the training and developmental levels, the controller is required to gain a great deal of knowledge about all facets of air traffic control work. At those levels he is also required to demonstrate that he is satisfactorily developing the skills and abilities to control air traffic." The Standard for the position at the GS-9 level provides that the position is an advanced developmental level for center controllers, and that an incumbent ". . . is evaluated both on his performance as a GS-9 and on his potential for progression to higher levels."

Pursuant to the above cited Position Classification Standard, the agency included in the appellant's official job description the statement that "Incumbents of this position who fail to meet the requirements for or to accept promotion to the next higher non-supervisory grade level may be reassigned, demoted, or separated from employment." On the basis of these provisions of the Commission's Classification Standards and the appellant's official job description, the Board finds that the agency was within its statutory authority in requiring the appellant to meet the requirements for higher grade level positions, and that the agency's removal of the appellant because of his failure to meet these requirements was for such cause as would promote the efficiency of the service. In view of the requirement that the appellant meet these requirements, the Board does not find that the agency acted unreasonably, arbitrarily, or capriciously in selecting the appellant for training.

In his affidavit of January 24, 1971, the appellant specifically stated that "I make no claim that the action of the agency in dismissing me was based upon race, creed, color or national origin." However, the record does not indicate what type of discrimination the appellant considered himself to have been subjected to. The Board therefore finds that the appellant has not submitted any evidence to support a finding that his removal was the result of the type of discrimination (prohibited by the regulations) against him by the agency.

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Finally, the Board finds that the method by which employees were selected to instruct and evaluate the appellant is not germane to the issue of whether the evaluations made by those employees of the appellant were correct.

DECISION

The decision of the Commission's New York Regional Office is hereby affirmed.

Section 772.307(c) of the Civil Service Regulations provides that the decision of the Board is final and that there is no further right of administrative appeal.

For the Commissioners:

William P. Berzak
William P. Berzak
Chairman

June 8, 1973

UNITED STATES CIVIL SERVICE COMMISSION
BOARD OF APPEALS AND REVIEW
Washington, D. C. 20415

D E C I S I O N

IN THE MATTER OF

Thomas Bevilacque

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) TYPE CASE: Removal
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INTRODUCTION

Through counsel, appellant made a timely appeal from the February 15, 1973 decision of the Commission's New York Regional Office, sustaining the appellant's removal by the Federal Aviation Administration, Department of Transportation, effective May 5, 1972. At the time of his removal, the appellant was employed at Islip, New York, in the position of Air Traffic Control Specialist (Center), GS-9.

STATEMENT OF THE CASE

On March 8, 1972, the appellant was given advance notice of the agency's proposal to remove him because of his failure to satisfactorily complete upgrade training requirements for the position of Manual/Interphone Controller, a developmental position. The basis of the agency's charge was set out specifically and in detail. The appellant answered the charge both personally and in writing.

The agency issued a decision on April 28, 1972, advising the employee that it had found the reasons for the appellant's removal supported by the evidence; that the removal action was warranted on the basis of the sustained charge; and that accordingly, the agency had decided to remove the appellant as proposed.

The appellant, through his representative, made a timely appeal from the agency decision to the Commission's New York Regional Office and requested that a hearing be conducted. In his affidavit to the Commission, the appellant generally contended that the agency had failed to give him proper developmental training and orientation, in violation of its rules and regulations relating to the progression of Assistant Controllers. During the hearing before the Region which was held on December 27, 1972, the appellant's representative contended that the termination of the appellant without a hearing was a violation of the appellant's rights.

DECISION OF THE NEW YORK REGIONAL OFFICE

In its decision, the Region found that the procedural requirements of Part 752-B of the Civil Service Regulations were applicable to the appellant's removal and had been complied with by the agency in effecting the adverse action.

With respect to the merits of the case, the Region found that according to the uncontested evidence of record, the appellant was aware of the requirement to meet upgrading training requirements for the position of Manual/Interphone Controller as a condition for continued employment; that he was afforded full and fair training opportunity in accordance with agency regulations; and, that he failed to pass the required problems. Accordingly, the Region determined that under the circumstances, the decision to remove the appellant was not arbitrary, unreasonable, or capricious, and was for such cause as would promote the efficiency of the service.

REPRESENTATIONS TO THE BOARD OF APPEALS AND REVIEW

In the appeal to the Board, the appellant's representative renewed his contention that the termination of the appellant's employment without a hearing was a violation of his procedural rights. It was further contended that the action of the agency in summarily separating the appellant was "in excess of its statutory authority, jurisdiction and limitations; and that his removal was discriminatory, arbitrary, capricious and unreasonable".

The appellant's representations were furnished to the agency for its

comment, and the agency responded. All of the representations submitted by the parties to the appeal were considered by the Board in its adjudication of the appeal.

ANALYSIS AND FINDINGS

Based upon its review of the entire record, the Board concurs in the findings of the Regional Office that the agency properly complied with all the procedural requirements of Part 752-B of the Civil Service Regulations in effecting the appellant's removal from the service. With respect to the contention that the termination of the appellant before according him a hearing was a violation of his rights, the appellant's representative requested that the Board consider several cases, including Kennedy v. Sanchez, 72 C 771 (N.D. Ill. October 24, 1972) as controlling in the instant case. The Board has considered the holdings of these cases, but does not find them controlling in the appellant's case. Neither the law nor the applicable Civil Service Regulations provided the appellant a right to a hearing prior to his removal from the service. It is the judgment of the Board that the appellant was accorded all the rights to which he was entitled in the proceedings leading to his removal.

With respect to the merits of the case, the Board concurs in the Region's finding that the reasons for the proposed adverse action and the specifications in support thereof were fully supported by the evidence of record; and, that the removal action was not arbitrary, unreasonable or capricious. With respect to the contention that the offer to appellant of appointment to the GS-7 level did not state that his employment was dependent upon promotional advancement, the record indicates that the appellant's position description number EA 8378 for the GS-7 level and number EA 8377 for the GS-9 level clearly required progression by the employee. Specifically, each of these position descriptions stated that the "incumbents of this position who fail to meet the requirements for or accept promotion to the next higher supervisory grade level may be reassigned, demoted or separated from employment".

The record further shows that the appellant failed to meet the requirements for advancement to the GS-11 level at the end of his training period in spite of at least three major training efforts on the part of the agency. Although it is contended by the appellant's side that

the problems were administered in such a way as to make them impossible to pass, there was no other evidence or testimony offered to support such contentions.

The evidence of record satisfies the Board that the agency afforded the appellant a full and fair opportunity to satisfactorily complete the required training program. The Board also finds no evidence to indicate that the appellant was removed for any reason other than his inability to successfully complete the advanced phase of the required training program.

DECISION

In view of the foregoing, the Board of Appeals and Review hereby affirms the decision of the Commission's New York Regional Office dated February 15, 1973.

Section 772.307(c) of the Civil Service Regulations provides that decisions of the Board of Appeals and Review are final and there is no further right of administrative appeal.

For the Commissioners:

William P. Berzak
William P. Berzak
Chairman

May 17, 1973

Re: Thomas Bevilacque

Mr. Thomas Bevilacque
6 Lewis Street
Bayville, Long Island
New York 11709

Mr. Samuel Resnicoff
Counselor at Law
280 Broadway
New York, New York 10007

Director, Eastern Region
Federal Aviation Administration
Department of Transportation
Federal Building
John F. Kennedy International Airport
Jamaica, New York 11430

Director
Office of Labor Relations LR-1
Federal Aviation Administration
Room 316
Washington, D.C. 20590

New York Regional Office

OFFICE OF LABOR RELATIONS
MAY 8 1973

MAY 8 1973
SENT AND VERIFIED
FILED BY [initials]

UNITED STATES CIVIL SERVICE COMMISSION
BOARD OF APPEALS AND REVIEW
Washington, D. C. 20415

DECISION

IN THE MATTER OF

Louis C. Resler

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TYPE CASE: Removal

INTRODUCTION

The appellant, through counsel, appealed from the May 22, 1973 decision of the Commission's New York Regional Office, sustaining the appellant's removal, effective April 28, 1972. At the time of his removal, the appellant was employed by the Department of Transportation, Federal Aviation Administration, New York Air Route Traffic Control Center, Lake Ronkonkoma, New York in the position of Air Traffic Control Specialist (Center, TS-9).

STATEMENT OF THE CASE

By letter dated March 8, 1972, the agency informed the appellant of its proposal to remove him for, "Failure to satisfactorily complete upgrade training requirements for the position of Manual/Interphone Controller" as required by his job description. The notice included one specification and seven examples of the appellant's failure to complete training requirements.

The appellant responded to the advance notice both orally and in writing. By letter dated April 19, 1972, the agency informed the appellant that the reason and specification given for his removal were fully supported by the evidence and that the removal action was warranted. Accordingly, the appellant was removed as proposed.

DECISION OF THE COMMISSION'S REGIONAL OFFICE

The Regional Office found that the agency complied with the procedural requirements of the Civil Service Regulations in effecting the appellant's removal.

As to the merits of the case, the Region found that the reasons and specifications cited in the notice of proposed removal are sustained by the evidence and that the agency action was not unreasonable, arbitrary, or capricious but for such cause as to promote the efficiency of the service.

REPRESENTATIONS TO THE BOARD OF APPEALS AND REVIEW

In his appeal to the Board, through counsel, the appellant contended that his procedural rights had been violated in that the agency failed to provide him with a full evidentiary hearing prior to his removal; the agency had decided to remove the appellant even before he had replied to the charges; and that he was denied the opportunity to cross-examine certain employees of the agency whom the agency had failed to provide as witnesses.

The appellant further contended that the action taken by the agency was in excess of the agency's statutory authority and jurisdiction; that its action was arbitrary, capricious, discriminatory, and unreasonable; and that the agency failed to establish the competence of the employees who acted as instructors of the appellant or the method for their selection.

It is also contended that the agency failed to plead and prove that the appellant failed to qualify for promotion under national standards and not local facility standards. It is further alleged that the agency was guided by its local facility standards in effecting the appellant's removal.

ANALYSIS AND FINDINGS

With respect to the contention that the appellant had a right to a full evidentiary hearing prior to his removal, the Board notes that section 7512 of Title 5 of the United States Code provides that a preference eligible employee against whom an adverse action is proposed is entitled to a reasonable time for answering the notice personally and in writing and for furnishing affidavits in support of his answer. Pursuant to this section, Section 752.202(b) of the Civil Service Regulations provides, in part, as follows:

The right to answer personally includes the right to answer orally in person by being given a reasonable opportunity to make any representations which the employee believes might sway the decision on his case, but does not include the right to a trial or formal hearing with examination of witnesses.

The Board therefore finds that the appellant's right to a hearing was not violated by the agency since it provided him with an opportunity to answer the charges as required under applicable statute and regulation.

It is also contended that the agency's statement in the advance notice that "This is notice that I proposed to remove you from your position as Air Traffic Control Specialist (Center) GS-2152-9 ..." was evidence that the agency had made its decision to remove the appellant before he had responded to the charge against him. However, Subchapter S4-4 of the Federal Personnel Manual Supplement 752-1 states as follows:

A notice must make it clear that it concerns only a proposed action and not a matter already decided.... This can be made clear by a statement that it is a notice of proposed adverse action and that the employee's answer will be considered before a decision is reached.

The subchapter further provides that "The advance notice must state the most severe action proposed." The record shows that the agency in the advance notice advised the appellant of his right to reply to the charges and that "Full consideration will be given to any reply you submit." The Board finds, therefore, on the basis of the record, that the agency complied with the procedural requirements of the Civil Service Regulations, and that substantial evidence has not been submitted which would support a finding that the agency made its determination prior to its consideration of the appellant's reply.

With respect to the contention that the appellant was denied the right to cross-examine agency employees regarding his unsatisfactory performance on the problems used to evaluate him, Chapter 772 of the Federal Personnel Manual, Subchapter S3-2, provides in part that:

The parties are responsible for furnishing the Commission office all evidence which they have or can obtain in support of their case and in addition must respond to requests from the Commission office for information or evidence which that office considers necessary for a proper adjudication of the appeal.

The record indicates that by letter dated March 5, 1973, the Commission's first appellate level advised the appellant that he was responsible for securing witnesses, and that the first appellate level would assist him in obtaining witnesses, although it did not have subpoena power. By letter dated March 6, 1973, the appellant's counsel requested the presence of two agency employees for the scheduled hearing. These two employees were present at the hearing. The record, however, does not indicate that the appellant requested at any time, before or after the March 6, 1973 letter, that the employees responsible for instructing and evaluating him be made available as witnesses.

In addition, Subchapter S3-2 also provides that "An agency shall make its employees available as witnesses at the hearing when (a) requested to do so by the Commission after consideration of a request by the appellant or the agency..." [Emphasis added] The Board finds that the appellant did not request that the employees who instructed and evaluated him be made available as witnesses at the hearing, and that the agency was not obligated, as the appellant contends, to make these employees available as witnesses. The Board therefore finds that the appellant's failure to cross-examine these witnesses was not the result of any procedural error.

With respect to the contention that the termination of the appellant before according him a hearing was a violation of his rights, the case of Kennedy v. Sanchez, N.D. Ill., E. Div., No 72C771 was cited. The Board has considered the holding in this case, but does not find it controlling in the appellant's case. Neither the law nor the applicable Civil Service Regulations provided the appellant a right to a hearing prior to his removal from the service. It is the judgment of the Board that the appellant was accorded all the rights to which he was entitled in the proceedings leading to his removal.

With respect to the merits of the case, the Commission's Position Classification Standard for the position of Air Traffic Control Specialist (Center), GS-2152, provides that "At the training and developmental levels, the controller is required to gain a great deal of knowledge about all facets of air traffic control work. At those levels he is also required to demonstrate that he is satisfactorily developing the skills and abilities to control air traffic." The Standard for the position at the GS-9 level provides that the position is an advanced developmental level for center controllers, and than an incumbent "...is evaluated both on his performance as a GS-9 and on his potential for progression to higher levels."

Pursuant to the above cited Standard, the agency included in the appellant's official job description the statement that "Incumbents of this position who fail to meet the requirements for or to accept promotion to the next higher non-supervisory grade level may be reassigned, demoted, or separated from employment." On the basis of these provisions of the Commission's Classification Standards and the appellant's official job description, the Board finds that the agency was within its statutory authority in requiring

the appellant to meet the requirements for higher grade level positions. Under the circumstances, the Board does not find that the agency acted unreasonably, arbitrarily, or capriciously in selecting the appellant for training.

In his affidavit of February 22, 1973, the appellant specifically stated that "I make no claim that the action of the agency in dismissing me was based upon race, creed, color, or national origin." The only indication of discrimination which has been raised, however, is in reference to the appellant's age. The Board has examined this issue and concurs in the conclusion of the Regional Office that the appellant accepted the position with full knowledge of the conditions of employment and therefore the difficulties encountered due to his age if any, did not relieve him of his obligation to comply with the conditions of employment.

With respect to the method by which employees were selected to instruct and evaluate the appellant and also the questions raised concerning their competence, it appears that such issues are not germane, particularly in view of the fact that the record contains no convincing evidence that the appellant did meet all of his training requirements. The Board also notes that there is no evidence in the record which would indicate that the instructors who evaluated the appellant were in any way responsible for his failure to meet these training requirements.

As to the issues raised concerning the national and local facility standards for controllers, the record clearly shows that the appellant failed to meet both the National Enroute Training Program requirements and the New York Center requirements. These requirements, as well as specific instances of the appellant's unsatisfactory performance with respect to these requirements, have been set forth. In the absence of any evidence which would indicate that the appellant qualified for promotion under national standards, and in view of the entire record, the Board finds that the national standards have not been met.

The evidence of record satisfies the Board that the agency afforded the appellant a full and fair opportunity to satisfactorily complete the required training program. The Board also finds no evidence to indicate that the appellant was removed for any reason other than his inability to successfully complete upgrade training requirements.

DECISION

In view of the foregoing, the Board of Appeals and Review hereby affirms the decision of the Commission's New York Regional Office dated May 22, 1973.

Section 772.307(c) of the Civil Service Regulations provides that decisions of the Board of Appeals and Review are final and there is no further right of administrative appeal.

For the Commissioners:

William P. Berzak
William P. Berzak
Chairman

August 20, 1973

UNITED STATES CIVIL SERVICE COMMISSION
BOARD OF APPEALS AND REVIEW
Washington, D. C. 20415

D E C I S I O N

IN THE MATTER OF

John J. Shannon

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) TYPE CASE: 752-B Removal
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INTRODUCTION

Appellant, through his representative, appealed to the Board on May 18, 1973 from the decision of the Commission's New York Regional Office. The New York Region in its decision sustained the action taken by the Department of Transportation, Federal Aviation Administration, J. F. K. International Airport, Jamaica, New York, to remove appellant from the position of Air Traffic Control Specialist (Center), GS-9, effective May 5, 1972.

STATEMENT OF THE CASE

In a letter dated March 8, 1972, the agency notified appellant of the proposal to remove him from the Federal service. The agency based the proposed removal action on the charge that appellant failed to satisfactorily complete upgrade training requirements for the position of Manual/Interphone Controller, as required by appellant's job. In the advance notice the agency explained the charge with specificity and detail, including seven examples of appellant's unsatisfactory performance.

Appellant submitted a written reply to the advance notice on March 15, 1972 and an oral reply on March 27, 1972. By letter

dated April 19, 1972, the agency issued its decision to remove appellant effective April 28, 1972. A letter notifying appellant that his removal would be effective May 5, 1972 was issued on April 25, 1972.

In a letter dated May 10, 1972, appellant appealed to the agency, and a hearing was held on August 15, 1972. By letter dated October 3, 1972, the agency sustained appellant's removal. Appellant appealed to the Commission's New York Regional Office on October 18, 1972 and requested a hearing, which was held on February 8, 1973.

FIRST LEVEL DECISION

The Region found that the agency had complied with all the applicable procedural requirements of Part 752-B of the Civil Service Regulations. As to the merits, the Region found that the charge as stated in the advance notice was fully sustained by the preponderance of the evidence. The Region noted that there were no other positions to which appellant could have been assigned. Therefore, the Region found that appellant's removal from the Federal service was neither unreasonable, arbitrary or capricious but was for such cause as would promote the efficiency of the service.

REPRESENTATIONS TO THE BOARD OF APPEALS AND REVIEW

In his representations to the Board, dated June 6, 1973, appellant, through his representative, asserted that the action of the agency in summarily terminating appellant without giving him a hearing prior to termination was illegal, improper and contrary to decisional law; that appellant was denied the opportunity to cross-examine certain employees of the agency whom the agency had failed to provide as witnesses; that the agency in its letter of advance notice decided to dismiss appellant even before a reply was submitted by him, and that the removal action in this case was in excess of the agency's statutory authority, jurisdiction and limitations and was arbitrary, capricious, discriminatory and unreasonable. Also, it is asserted that the agency failed to plead and prove that appellant failed to qualify for promotion

under national standards and not local facility standards and that the agency failed to establish by evidence the competence of the instructors who evaluated appellant.

The agency sent representations to the Board by letter dated June 22, 1973.

ANALYSIS AND FINDINGS

The Board of Appeals and Review has given careful consideration to the entire appellate record developed in this case, including the representations submitted to the Board by appellant and the agency.

The Board does not agree with appellant's assertion concerning a right to a full evidentiary hearing prior to his removal. Under Part 752, Section 752.202 of the Civil Service Regulations, a Federal employee does not have a right to a trial or formal hearing with examination of witnesses during the notice period before removal. Appellant did have a right before removal to a reasonable time for answering the advance notice of adverse action personally and in writing and to furnish affidavits in support of his answer. The agency in its March 8, 1972 letter of advance notice properly advised appellant of his rights under Civil Service Regulations.

With regard to the cases, including Kennedy v. Sanchez, cited by appellant in support of his assertion that he had a right to a formal hearing before his removal, the Board notes that under current Civil Service Regulations, appellant did not have a right to a hearing before his removal from the Federal service, and the agency's failure to afford appellant a hearing before his removal is not found to be a procedural error.

The Board disagrees with appellant's contention that the agency's statement in the advance notice that "This is notice that I propose to remove you from your position of Air Traffic Control Specialist (Center) GS-2152-9...." was evidence that the agency decided to dismiss appellant before any reply was submitted by him. According to Civil Service Regulations Part 752-B, section 752.202, the

agency in effecting an adverse action must allow "at least 30 days' advance written notice stating any and all reasons, specifically and in detail, for the proposed action." Subchapter S4-4 of Supplement 752-1 of the Federal Personnel Manual further provides that the agency in the advance notice must state that the notice is a notice of proposed adverse action and that the employee's answer will be considered before a decision is made. The agency complied with the applicable Civil Service Regulations in its March 8, 1972 advance notice. The Board also notes that appellant made a written reply to the advance notice on March 15, 1972 and an oral reply on March 27, 1972 and that the agency in its April 19, 1972 decision to remove stated that it had considered appellant's replies in making its decision. In light of these facts, with no other evidence to the contrary, the Board finds that the agency did not, as appellant contends, make its decision to remove prior to its consideration of appellant's reply.

The Board also disagrees with appellant's contentions about the agency's and the Commission's hearings, to wit, that appellant did not have meaningful representation at the agency hearing and that it was incumbent upon the agency in both hearings to make appellant's instructors available for cross-examination. Appellant was given a choice as to who would be his representative and simply because appellant's representative was not a lawyer and the hearing was his first, is not *prima facie* evidence that appellant did not have meaningful representation. In any event, the appellant's choice of representation was his own.

Subchapter 3-2 of Chapter 772 of the Federal Personnel Manual provides, in part, that:

The parties are responsible for furnishing the Commission office all evidence which they have or can obtain in support of their case and in addition must respond to requests from the Commission office for information or evidence which that office considers necessary for a proper adjudication of the appeal.

The record indicates that the Commission's New York Region in a letter dated January 10, 1973 informed appellant that the

securing of witnesses was appellant's responsibility. Furthermore, Subchapter S3-2 of Chapter 772 of the FPM provides that "An agency shall make the employees available as witnesses at the hearing when (A) requested to do so by the Commission after consideration of a request by the appellant or the agency." The Board finds that since appellant did not request that the employees who instructed and evaluated him be present as witnesses at either hearing and since the agency was not obligated to provide them otherwise, appellant's inability to cross-examine these witnesses was not the result of any procedural error.

In view of the above, the Board of Appeals and Review agrees with the Region that the agency complied with the procedural requirements of Part 752-B of the Civil Service Regulations in effecting appellant's removal. The Board also finds that the hearings afforded appellant were conducted in compliance with applicable Civil Service Regulations.

As to the merits, the Board notes that appellant's official position description #EA-8377 provides, in part, that:

This is a developmental position designed primarily to prepare Air Traffic Control Specialists for independent performance of work at the full performance level. Accordingly, the incumbent of this position receives training and acquires competence with performance of duties at the next higher grade level at this facility ...

The agency included in appellant's official position description the statement that: "Incumbents of this position who fail to meet the requirements for or to accept promotion to the next higher nonsupervisory grade level may be reassigned, demoted, or separated from employment."

In view of appellant's official position description, the Board finds that the agency was within its authority in requiring appellant to meet the requirements for higher grade level positions, that the agency's removal of appellant because of his failure to meet these requirements was for

such cause as would promote the efficiency of the service. Also, since appellant was required to meet the requirements for higher grade level positions, the Board does not find that the agency acted unreasonably, arbitrarily or capriciously in selecting appellant for training.

Finally, the Board finds that the method by which employees were selected to instruct and evaluate appellant is not relevant to the issue of whether the evaluations of appellant by these employees were correct.

DECISION

The decision of the Commission's New York Regional Office is hereby affirmed.

Section 772.307(c) of the Civil Service Regulations provides that the decision of the Board is final, and there is no further right of administrative appeal.

For the Commissioners:

William P. Berzak

William P. Berzak
Chairman

August 21, 1973

Re John J. Shannon

Distribution:

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Counselor at Law
280 Broadway
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Mr. John J. Shannon
206 Plitt Avenue
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Director, Eastern Region
Federal Aviation Administration
Department of Transportation
Federal Building
John F. Kennedy International Airport
Jamaica, New York 11430

Director of Personnel and Training
Department of Transportation
Washington, D. C. 20590

New York Region

RECORDED MAIL

AUG 2 1973

SENT AND VERIFIED

100%

UNITED STATES CIVIL SERVICE COMMISSION
BOARD OF APPEALS AND REVIEW
Washington, D. C. 20415D E C I S I O N

IN THE MATTER OF

Warren C. McDowell

) TYPE CASE: RemovalINTRODUCTION

The appellant, through counsel, appealed from the May 1, 1973 decision of the Commission's New York Regional Office, sustaining the appellant's removal, effective September 22, 1972. At the time of his removal, the appellant was employed by the Department of Transportation, Federal Aviation Administration, New York Air Route Traffic Control Center, Lake Ronkonkoma, New York, in the position of Air Traffic Control Specialist (Center), GS-11.

STATEMENT OF THE CASE

By letter dated August 2, 1972, the agency informed the appellant of its proposal to remove him for, "failure to satisfactorily complete upgrade training requirements for the position of Radar Controller/ Limited Developmental", as required by his job description. The notice included one specification and eight examples of the appellant's failure to complete training requirements.

The appellant responded to the advance notice both orally and in writing. By letter dated September 20, 1972, the agency informed the appellant that the reason and specification given for his removal were fully supported by the evidence and that the removal action was warranted. Accordingly, the appellant was removed as proposed.

E. 3

DECISION OF THE COMMISSION'S REGIONAL OFFICE

The Regional Office found that the agency complied with the procedural requirements of the Civil Service Regulations in effecting the appellant's removal.

As to the merits of the case, the Region found that the reasons and specifications cited in the notice of proposed removal were sustained by the evidence and that the agency action was not unreasonable, arbitrary, or capricious but was for such cause as to promote the efficiency of the service.

REPRESENTATIONS TO THE BOARD OF APPEALS AND REVIEW

In his appeal to the Board, through counsel, the appellant contended that his procedural rights have been violated in that the agency failed to provide him with a full evidentiary hearing prior to his removal; the agency had decided to remove the appellant even before he had replied to the charges; and, that he was denied the opportunity to cross-examine certain employees of the agency whom the agency had failed to provide as witnesses.

The appellant further contended that the action taken by the agency was in excess of the agency's statutory authority and jurisdiction; that its action was arbitrary, capricious, discriminatory, and unreasonable; and that the agency failed to plead and prove that the appellant failed to qualify for promotion under national standards and not local facility standards. It is also alleged that the agency was guided by its local facility standard in effecting the appellant's removal. The appellant further alleged that his training was inadequate and that since he was under a temporary medical disqualification his refusal to accept reassignment offered by the agency was justified.

ANALYSIS AND FINDINGS

With respect to the contention that the appellant had a right to a full evidentiary hearing prior to his removal, the Board notes that Section 7512 of Title 5 of the United States Code provides that a

preference eligible employee against whom an adverse action is proposed is entitled to a reasonable time for answering the notice personally and in writing and for furnishing affidavits in support of his answer. Pursuant to this section, Section 752.202(b) of the Civil Service Regulations provides, in part, as follows:

The right to answer personally includes the right to answer orally in person by giving a reasonable opportunity to make any representations which the employee believes might sway the decision on this case, but does not include the right to a trial or formal hearing with examination of witnesses.

The Board therefore finds that the appellant's right to a hearing was not violated by the agency since it provided him with an opportunity to answer the charges as required under applicable statute and regulation.

In support of the appellant's contention that he had a right to a formal hearing prior to his termination, the decision in the case of Kennedy v. Sanchez, 72 C 771 (N.D. Ill. October 24, 1972) was cited. The Board takes note of the decision in Kennedy v. Sanchez, but does not find it controlling in the appellant's case. In the Board's judgment, the appellant was not denied due process, nor any rights to which he was entitled under the law and regulations in the proceedings leading to his separation from the service.

It is also contended that the agency's statement in the advance notice that "this is notice that I propose to remove you from your position as Air Traffic Control Specialist (Center), GS-2152-11 . . ." was evidence that the agency had made its decision to remove the appellant before he had responded to the charge against him. The Board notes, however, that Subchapter S4-4 of the Federal Personnel Manual Supplement 752-1 states as follows:

A notice must make it clear that it concerns only a proposed action and not a matter already decided This can be made clear by a statement that it is a notice of proposed adverse action and that the employee's answer will be considered before a decision is reached.

The subchapter further provides that "The advance notice must state the most severe action proposed." The record shows that the agency in the advance notice advised the appellant of his right to

reply to the charges and that "Full consideration will be given to any reply you submit." The Board finds, therefore, on the basis of the record, that the agency complied with the procedural requirements of the Civil Service Regulations, and that substantial evidence has not been submitted which would support a finding that the agency made its determination prior to its consideration of the appellant's reply.

With respect to the contention that the appellant was denied the right to cross-examine agency employees regarding his unsatisfactory performance on the problems used to evaluate him, Chapter 772 of the Federal Personnel Manual, Subchapter S3-2, provides in part that:

The parties are responsible for furnishing the Commission office all evidence which they have or can obtain in support of their case and in addition must respond to requests from the Commission office for information or evidence which that office considers necessary for a proper adjudication of the appeal.

The record indicates that by letter dated January 10, 1973, the Commission's first appellate level advised the appellant that he was responsible for securing witnesses, and that the first appellate level would assist him in obtaining witnesses, although it did not have subpoena power. The appellant's counsel requested the presence of four agency employees for the scheduled hearing. These four employees were present at the hearing. The record, however, does not indicate that the appellant requested at any time that the employees responsible for instructing and evaluating him be made available as witnesses.

In addition, the Board notes that Subchapter S3-2 also provides that "An agency shall make its employees available as witnesses at the hearing when (a) requested to do so by the Commission after consideration of a request by the appellant or the agency" The Board finds that the appellant did not request that the employees who instructed and evaluated him be made available as witnesses at the hearing, and that the agency was not obligated, under the circumstances, as the appellant contends, to make these employees available as witnesses. The Board therefore finds that the appellant's failure to cross-examine these witnesses was not the result of any procedural error.

The Board of Appeals and Review, having fully considered the entire record, finds as did the first appellate level, that the agency fully

complied with the procedural requirements of Part 752, Subpart B of the Civil Service Regulations in separating the appellant from his position. The Board further finds that the hearing afforded the appellant by the Commission's Regional Office was conducted in compliance with the applicable rules and regulations.

With respect to the merits of the case, the Commission's Position Classification Standard for the position of Air Traffic Control Specialist (Center), GS-2152-11, provides that "At the training and developmental levels, the Controller is required to gain a great deal of knowledge about all facets of air traffic control work. At those levels he is also required to demonstrate that he is satisfactorily developing the skills and abilities to control air traffic". The Standard for the position at the GS-11 level provides that the position is an advanced developmental level for center controllers, and that an incumbent ". . . is evaluated both on his performance as a GS-11 and on his potential for progression to higher levels."

Pursuant to the above cited Position Classification Standard, the agency included in the appellant's official job description the statement that "incumbents of this position who fail to meet the requirements for or to accept promotion to the next higher non-supervisory grade level may be reassigned, demoted, or separated from employment." On the basis of these provisions of the Commission's Classification Standards and the appellant's official job description, the Board finds that the agency was within its authority in requiring the appellant to meet the requirements for higher grade level positions, when exposed to adequate qualifying training. In view of the requirement that the appellant meet these requirements, the Board does not find that the agency acted unreasonably, arbitrarily, or capriciously in selecting the appellant for training.

In his affidavit of November 21, 1972, the appellant specifically stated that "I make no claim that the action of the agency in dismissing me was based upon race, creed, color, or national origin." However, the record does not indicate what type of discrimination the appellant considered himself to have been subjected to. The Board finds that there is no evidence to support a finding that his removal was the result of any type of prohibited discrimination.

As to the issue raised concerning the national and local facility standards for controllers, the evidence of record clearly indicates that the appellant failed to meet both the National Enroute Training Program requirements and the New York Center requirements.

6.

With regard to appellant's contention that the training program was inadequate, the evidence in the record discloses that the appellant had received initial training on Radar Control from April 5, 1971 to April 30, 1971 and on-the-job-training from May 3, 1971 to August 6, 1971 and since he failed to check out on radar he received an additional two weeks training. After still failing to check out the appellant's case was reviewed by the Facility Training Review Board which granted him an additional four weeks of training. In addition, the appellant received written evaluations and counselling from his instructors regarding his training. Evidence of record further discloses that appellant received seven weeks training over the norm or average for other Air Traffic Control Specialists and still did not correct his deficiencies. In view of this, we find that appellant was given a full and fair opportunity to meet the training requirements.

The appellant has alleged that he never refused the offer of reassignment by the agency but since he was temporarily medically disqualified he could not accept the offer at that time. In review, we find that the agency complied with its requirements in offering the appellant another position. Since the appellant had to attend a class in Oklahoma for fourteen weeks before entering the position and since this training was to begin on July 25, 1972, the agency was under no obligation to defer the offer of reassignment until appellant became medically qualified.

Having found sustained by substantial evidence the charge of appellant's failure to satisfactorily complete required upgrade training, one of four principal parts in the job description of an Air Traffic Control Specialist, GS-2152-11, the Board concludes that removal of appellant from his position was not unreasonable, arbitrary, or capricious, but was for such cause as to promote the efficiency of the service.

DECISION

The Board hereby affirms the previous decision of the Commission's New York Regional Office dated May 1, 1973.

(A 61 (

7.

The decision of the Board is final and there is no further right of administrative appeal.

For the Commissioners:

William P. Berzak
William P. Berzak
Chairman

August 14, 1973

RE: Warren C. McDowell

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✓ New York Regional Office

OFFICE OF THE DIVISION
M & C UNIT
AUG 15 1973
SENT AND VEN
FILED BY *[Signature]*

FOR OFFICIAL USE ONLY

who had a hundred simulated problems would not necessarily have a greater advantage in successfully completing the Phase 2 course in comparison to the individual who had no such problems, (p. 104, transcript).

* * * * *

The appellant's claim that he was not afforded "procedural due process" is controverted by the evidence. He was given more than 30 days' advance written notice of the proposal to remove him, stating any and all reasons specifically and in detail for the proposal; he was given an opportunity to reply orally and in writing and he availed himself of those rights. He was given a final notice of decision -- all in accordance with Part 752-B, Section 752.202, of the Civil Service Regulations.

The appellant's claim that he was not given proper informal training before being sent to Oklahoma City is negated by the testimony of Mr. Stanley Lowell at the appellant's hearing to the effect that no such informal training is actually required. The appellant had completed Phase 1 training and that, according to Mr. Lowell, is all that is required. It may be true that other trainees gained some slight advantage by receiving more problems than the appellant received, but the only requirement for Phase 2 training was that the trainee must have completed Phase 1 training and must have retained the skills and knowledges learned in Phase 1 before being recommended for Phase 2 training. The evidence is clear that the informal on-the-job training which the appellant protests was inadequate was merely a preview of the training he might expect in Phase 2 and the laboratory problems he would receive after he returned to the New York facility following his training in Oklahoma City.

Of paramount importance in appellant's case, in the opinion of the undersigned, and as set forth in the specifications, is the danger to life and property which would result if an unqualified controller permitted aircraft to proceed through airspace occupied by other aircraft. These were the appellant's failures as set forth in the seven problems delineated in the specifications contained in the letter of proposed removal dated March 8, 1972.

FINDINGS AND RECOMMENDATIONS

It is the finding of the undersigned examiner that the specifications contained in the letter of proposed adverse action are fully supported by the appellant's admissions; that the extenuating circumstances alleged by the appellant are not supported by the evidence; and that the removal action in the appellant's case was not arbitrary, capricious, or unreasonable, but was for such cause as will promote the efficiency of the service within the meaning of that language in Part 752-B of the Civil Service Regulations.

FOR OFFICIAL USE ONLY

POSITION DESCRIPTION		EASTERN Region		EA- 8375	
		a. Reasons for submission: (a) If this position replaces another (i. e., a change of duties in an existing position), identify such position by title, location (service, series, grade), and position number		b. C. S. C. certifying the position	
		(b) Other (specify): Application of New Standards		c. Date of certification 12/15/68	
d. CLASSIFICATION ACTION				7. Date received from C. S. C.	
e. ALLOCATION BY		CLASS TITLE OF POSITION		CLASS	
a. Civil Service Commission				Service	Series
b. Department, agency, or establishment		Air Traffic Control Specialist (Center)		GS	2152
c. Bureau				11	J
d. Field office					
e. Recommended by initiating office					
f. Organizational title of position (if any)				10. Name of employee (if necessary, specify V. I. S. or A)	
Radar Associated/Manual Developmental					
g. Department, agency, or establishment				11. Third subdivision	
DEPARTMENT OF TRANSPORTATION				AREA	
h. First subdivision				12. Fourth subdivision	
FEDERAL AVIATION ADMINISTRATION				Air Traffic Branch	
i. Second subdivision				13. Fifth subdivision	
EASTERN REGION				Level II Centers	
12. This is a complete and accurate description of the duties and responsibilities of my position				14. This is a complete and accurate description of the duties and responsibilities of this position	
(Signature of employee)		(Date)		(Signature of immediate supervisor)	
Dorothy J. Erb 12/15/68		(Date)		(Signature)	
Title: Chief, Air Traffic Division, EA-500		Title: Dorothy J. Erb		Title: DOROTHY J. ERB, Acting Chief, Position Classification Branch	
16. Description of duties and responsibilities				17. Certification by department, agency, or establishment	
				12/15/68	
I. POSITION SUMMARY					
<p>Performs a variety of assignments of a developmental level at a Level II Center where the work situation is characterized by sustained periods of extremely heavy volumes of traffic. These sustained periods of extremely heavy congestion substantially increase the difficulty of working with combinations of such elements as: mixtures of arriving, departing and enroute traffic; mixtures of fast and slow aircraft; unfavorable terrain features; numerous airports and airways in the control area; and the regular occurrence of special civil and military missions. This work situation is normally found at a center facility where the annual volume of activity exceeds 1 million aircraft handled.</p>					
				46	

1. Computerized

a. Checking sector traffic to determine whether clearance can be issued without conflict upon receiving departure clearance requests from terminal facility.

b. Obtaining information as to whether proposed flight plan and altitude will conflict with traffic in other center sectors.

c. Issuing departure clearances as requested or with amendments based on traffic situation, which are relayed to the aircraft by terminal facilities. Sequencing traffic as required.

d. Determining acceptable inbound traffic loads to a terminal from his sector and furnishing this information to the radar controller.

e. Determining whether proposed inbound, outbound, or over-flights will conflict with anticipated traffic in his sector.

f. Issuing arrival information to terminals and accepting from or issuing to adjacent center, information on sector traffic.

g. As required, and under the direction of the radar controller to whose sector he is assigned, performing the transfer and identification of aircraft in handoffs to other facilities or positions.

2. Manual:

a. Issuing clearances and instructions to the pilot via direct controller/pilot voice communications.

b. Planning control actions to permit aircraft to move up and down to reach specific altitudes without being in a hazardous relationship with other aircraft.

c. Determining the need for executing shortened holding patterns to expedite continuance on course and suggesting deviations from normal course or speed to reduce potential delays.

d. Furnishing information to the radio or radar controller regarding approach or en route clearances which must be relayed directly or indirectly to the pilot and air traffic that is entering the sector.

III. SUPERVISION RECEIVED

Works under immediate supervision at the outset of each assignment to a new kind of work; but when checked out for particular positions(s) of operation, the specialist independently performs the described duties under general supervision.

IV. OTHER FACTORS

This is a developmental position designed primarily to prepare Air Traffic Control Specialists for independent performance of work at the full performance level. Accordingly, the incumbent of this position receives training and acquires competence in the performance of duties at the next higher grade level at this facility which are described in Position Description EA-8374. Additionally, position may be required to rotate through lower graded duty assignments which are described in Position Description EA-8377; 8378.

Incumbents of this position who fail to meet the requirements for or to accept promotion to the next higher nonsupervisory grade level may be reassigned, demoted or separated from employment.

POSITION DESCRIPTION		POSITION CLASSIFICATION																			
CLASSIFICATION ACTION		(b) Other (check) Application of New Standards																			
<input checked="" type="checkbox"/> Allocation by <input type="checkbox"/> Civil Service Commission <input type="checkbox"/> Department, agency, or establishment <input type="checkbox"/> Bureau <input type="checkbox"/> Field office <input type="checkbox"/> Recommended by initializing office		CLASS TITLE OF POSITION Air Traffic Control Specialist (Center) <table border="1" style="float: right; margin-right: 10px;"> <tr> <td>Revised</td> <td>Before</td> <td>Date</td> <td>Comments</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </table>				Revised	Before	Date	Comments												
Revised	Before	Date	Comments																		
B. Organizational title of position (if any) Interphone Developmental		D. Name of employee (if on classification form) Dorothy J. Eber																			
C. Department, agency, or establishment DEPARTMENT OF TRANSPORTATION		E. Third authority level AREA Air Traffic Branch																			
F. First subdivision FEDERAL AVIATION ADMINISTRATION		F. Fourth subdivision Level II Center																			
G. Second subdivision EASTERN REGION		G. Fifth subdivision 13. This is a complete and accurate description of the duties and responsibilities of my position This is a complete and accurate description of the duties and responsibilities of my position.																			
H. Signature of employee Dorothy J. Eber <small>(Signature)</small>		I. Date 12/1/68																			
J. Certification by head of bureau, division, field office, or designated representative Dorothy J. Eber <small>(Signature)</small> Title: Chief, Air Traffic Division, EA-100		K. Certification by department, agency, or establishment Dorothy J. Eber <small>(Signature)</small> Title: DOROTHY J. EBER, Acting Chief, Position Classification Branch																			
L. POSITION SUMMARY <p>Performs a variety of assignments of a developmental level at a level II Center where the work situation is characterized by sustained periods of extremely heavy volumes of traffic. These sustained periods of extremely heavy congestion substantially increase the difficulty of working, with combinations of such elements as: mixtures of arriving, departing and enroute traffic; mixtures of fast and slow aircraft; unfavorable terrain features; numerous airports and airways in the control area; and the regular occurrence of special civil and military missions. This work situation is normally found at a center facility where the annual volume of activity exceeds 1 million aircraft handled.</p>																					

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8-317

II. Principal Duties and Responsibilities

1. Maintaining a continuing record of the traffic in his area by using flight progress strips.
2. Sequencing his traffic and forming a mental picture of the present and future position of aircraft.
3. Reviewing proposed and active flights to resolve possible conflicts.
4. Coordinating with adjacent sectors and facilities to assure proper separation between aircraft operating in his sector.
5. Issuing clearances and instructions by interphone to terminals, FSSs/1FSSs, or airline offices which relays information to pilots. Receiving information on the aircraft's movement and position in the same manner.

III. Supervision Received

Works under immediate supervision at the outset of each assignment to a new kind of work; but when checked out for particular position(s) of operation, the controller independently performs the described duties under general supervision.

IV. Other Factors

This is a developmental position designed primarily to prepare Air Traffic Control Specialists for independent performance of work at the full performance level. Accordingly, the incumbent of this position receives training and acquires competence in the performance of duties at the next higher grade level at this facility which are described in Position Description EA-83/2. Additionally, position may be required to rotate through lower graded duty assignments which are described in Position Description EA-83/1.

Incumbents of this position who fail to meet the requirements for or to accept promotion to the next higher nonsupervisory grade level may be reassigned, demoted or separated from employment.

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss

LYDIA FERNANDEZ

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

two copies

That on the 29th day of October 19 76 he served ~~a copy~~ of the within Appellees' Appendix

by placing the same in a properly postpaid franked envelope addressed to:

Sam Resnicoff and Murray A. Gordon, P.C.
666 Third Avenue
New York, N. Y. 10017

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, ~~Washington Street~~, Borough of Brooklyn, County of Kings, City of New York.

Lydia Fernandez
LYDIA FERNANDEZ

Sworn to before me this

29th day of October 19 76

Carolyn N. Johnson

C. N. Johnson
U.S. Courthouse
225 Cadman Plaza East
Borough of Brooklyn
County of Kings
City of New York

27